

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

IN RE: NATIONAL : MDL No. 2804  
PRESCRIPTION OPIATE :  
LITIGATION : Case No. 17-md-2804  
:  
APPLIES TO ALL CASES : Hon. Dan A. Polster  
:  
:

HIGHLY CONFIDENTIAL

SUBJECT TO FURTHER CONFIDENTIALITY REVIEW

- - - -

JANUARY 22, 2019

- - - -

VIDEOTAPED DEPOSITION OF FRED BENCIVENGO,  
taken pursuant to notice, was held at Marcus &  
Shapira, One Oxford Center, 35th Floor,  
Pittsburgh, Pennsylvania 15219, by and before Ann  
Medis, Registered Professional Reporter and Notary  
Public in and for the Commonwealth of  
Pennsylvania, on Tuesday, January 22, 2019,  
commencing at 2:08 p.m.

- - - -

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## \* I N D E X \*

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P R O C E E D I N G S

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THE VIDEOGRAPHER: We are now on the record. I'm a videographer retained by Golkow Litigation Services. Today's date is Tuesday, January 22, 2019, and the time is 2:08 p.m.

This video deposition is being held at One Oxford Centre, Pittsburgh, PA, in the matter of National Prescription Opiate Litigation MDL, for the Northern District of Ohio.

The deponent is Fred Bencivengo.

Will counsel please identify themselves and state whom they represent.

MR. HUDSON: Ty Hudson of Wagstaff & Cartmell for plaintiffs.

MS. MONAGHAN: Meghan Monaghan from Covington & Burling on behalf of McKesson.

MR. SCHWAB: John Schwab on behalf of Cardinal.

MR. KOBRIN: Josh Kobrin of Marcus & Shapira, on behalf of HBC Service Company.

THE VIDEOGRAPHER: And counsel on the phone, please identify yourselves.

MR. BRODSKY: This is Richard Brodsky from Jones Day on behalf of Walmart.

1 MR. MILLER: Hi. This is Jake Miller  
2 from Arnold & Porter on behalf of the Endo and Par  
3 defendants. I don't know if others on the phone  
4 are having this issue, but at least for me, the  
5 realtime feed does not appear to be working. I'm  
6 not seeing any text generated on the screen.

7 MR. SCHOCK: This is Andrew Schock of  
8 Jackson Kelly for the AmerisourceBergen Drug  
9 Corporation.

10 THE VIDEOGRAPHER: The court reporter is  
11 Ann Medis, and she will now swear in the witness.

12 FRED BENCIVENGO,  
13 having been first duly sworn, was examined  
14 and testified as follows:

15 EXAMINATION

16 BY MR. HUDSON:

17 Q. Sir, could you please state your full  
18 name for the record.

19 A. Fred Bencivengo.

20 Q. And what is your current address?

21 A. 3556 Layer Road in Warren, Ohio.

22 Q. Have you ever had your deposition taken  
23 before?

24 A. Yes.

25 Q. How many times?

1 A. Once.

2 Q. And what was the nature of that case?

3 A. It was an overdose actually on  
4 methadone, and I was an expert witness for the  
5 defense.

6 Q. And when was that, how long ago?

7 A. In the middle '90s.

8 Q. Well, it's been a little while. So I'll  
9 just make sure that we understand the ground  
10 rules. I'm going to be asking questions. From  
11 time to time counsel may object. Unless your  
12 counsel instructs you not to answer, will you  
13 agree to answer my questions?

14 A. Yes.

15 Q. And if you don't understand my question,  
16 will you let me know so I can rephrase it?

17 A. Sure.

18 Q. Is it fair that if you answer my  
19 question, I can assume that you understood it?

20 A. Yeah.

21 COUNSEL ON PHONE: Can others confirm,  
22 is the text working for them on the live feed?  
23 Because it's not working for me.

24 THE VIDEOGRAPHER: We are going off the  
25 record. The time is 2:11 p.m.



1 (Recess from 2:11 p.m. to 2:21 p.m.)

2 THE VIDEOGRAPHER: We're going back on  
3 the record. The time is 2:21 p.m.

4 BY MR. HUDSON:

5 Q. Mr. Bencivengo, did I pronounce that  
6 correctly?

7 A. Yes.

8 Q. You understand that you're under oath?

9 A. Yes.

10 Q. You're swearing to tell the truth just  
11 like you would if you were in a courtroom in front  
12 of a judge and a jury?

13 A. Yes.

14 Q. You're doing a good job of this, but if  
15 you could, just give audible answers as opposed to  
16 nonverbal nods or things like that.

17 A. Okay.

18 Q. And then lastly, if you need to take a  
19 break at any time, just let me know, and we can go  
20 off the record. All I would ask, if there's a  
21 pending question, you answer that before we go off  
22 the record; is that fair?

23 A. Yes.

24 Q. What did you do to prepare for the  
25 deposition today?

1 A. Met with counsel.

2 Q. Approximately how many hours did you  
3 meet?

4 A. With breaks and lunch, probably about  
5 seven hours.

6 Q. Did you look at documents?

7 A. Yes.

8 Q. Before meeting with counsel for that  
9 seven-hour meeting, had you done anything else to  
10 prepare for this deposition?

11 A. No.

12 Q. Had you talked to anyone about this  
13 deposition?

14 A. Josh.

15 Q. Other than counsel.

16 A. No, no.

17 Q. I want to start then with your  
18 education. If you could, just describe where you  
19 went to college.

20 A. I have a bachelor's degree in pharmacy.  
21 I got in 1992 from Ohio Northern University.

22 Q. So explain to me what that degree is.  
23 Is that a pharmacy degree?

24 A. At that time, it was a five-year degree;  
25 correct.

1 Q. And would you describe it as a pharmacy  
2 degree or degree from pharmacy school?

3 A. It's a pharmacy school. I have a  
4 pharmacy degree.

5 Q. After you received your pharmacy degree,  
6 what did you do?

7 A. I worked for an independent from '92 up  
8 until 2000 in various roles. We had about four  
9 stores and their single pharmacy, mail order  
10 pharmacy. It split off. I managed the four  
11 stores. It split off to four stores of retail and  
12 one pretty nice size nursing home pharmacy. I got  
13 out of that part and became the operations  
14 director of the retail side.

15 Q. What was the name of that company?

16 A. Conva-Med, C-O-N-V-A-Med.

17 Q. Where was that company located?

18 A. We had four stores. The headquarters  
19 was out of Cornersburg; Cornersburg, Ohio,  
20 Austintown.

21 Q. And is that where you were located?

22 A. When we first started -- when we first  
23 started, we started in Brookfield, moved out to  
24 that location. Then my office got moved over down  
25 towards Youngstown.

1 Q. Why did you leave Conva-Med?

2 A. They closed.

3 Q. And why did they close?

4 A. Some bad business deals from the owners.

5 Q. Was there any sort of investigation by  
6 the DEA or others of the company?

7 A. No. It was a typical independent  
8 closing. We just couldn't do it anymore, and we  
9 sold our files.

10 Q. So when you mean bad business deals, you  
11 just mean like financially they just made  
12 decisions that caused them to lose money instead  
13 of make money?

14 A. Yeah. The two owners were clashing.

15 Q. We're starting to talk over each other,  
16 and I'm sometimes guilty of that, too. So if we  
17 could, as best you can, let me finish my question  
18 and then I will do my very best to let you finish  
19 your answer before we start talking because,  
20 otherwise, she's going to become very upset with  
21 us.

22 So Conva-Med closed in 2000, and at that  
23 point, did you go to work for Giant Eagle?

24 A. Yes.

25 Q. And what was your first role at Giant

1 Eagle?

2 A. I was the pharmacy manager in the store  
3 in Ravenna, Ohio.

4 Q. Say the name of the town again.

5 A. Ravenna.

6 Q. How long did you remain at that store?

7 A. Until approximately the end of 2006.

8 Q. And at that point, were you promoted to  
9 a pharmacy district leader?

10 A. Correct.

11 Q. What territory did you have in 2006 when  
12 you became a pharmacy district leader?

13 A. The Akron/Canton area.

14 Q. And do you remain in that role as a  
15 pharmacy district leader today?

16 A. Yes.

17 Q. Is pharmacy district leader sometimes  
18 referred to as a PDL?

19 A. That's exactly what it is, yeah.

20 Q. So if I use the acronym PDL, you'll know  
21 what I mean, pharmacy district leader?

22 A. Yes.

23 Q. Has your territory, PDL territory  
24 changed between 2006 and today?

25 A. Actually, I'm back to the stores I was

1 in in 2006. But, yes, it's changed over the year.

2 Q. If you could, just walk me through the  
3 evolution over that, I think, it's 12 years or so.

4 A. Not hitting the dates correctly, I had  
5 had that territory probably for about two years.  
6 I took over the Youngstown/Erie, Pennsylvania  
7 region for a very small period of time. I went up  
8 in east Cleveland after that.

9 Q. And the east Cleveland territory, how  
10 long did you have that?

11 A. For a couple of years.

12 Q. Do you have a ballpark on what those  
13 years would be?

14 A. Probably from I want to say '15 maybe to  
15 '17.

16 Q. And how about when you switched over to  
17 the territory in Pennsylvania, did you add those  
18 stores, or did you shift completely from Ohio to  
19 Pennsylvania?

20 A. There's not enough stores in Erie, so I  
21 had Youngstown/warren. There was 13 or 14 stores  
22 there and then the five or six stores in Erie.

23 Q. But all of those stores in Pennsylvania?

24 A. Yeah. It was a split. There was like  
25 13 or 14 in Ohio, and the rest were in

1 Pennsylvania.

2 Q. And then in 2017, then you went back to  
3 the region that had the Akron?

4 A. Yeah. They redraw the lines every once  
5 in a while, add stores, take stores away. But for  
6 the most part, the stores I have now were the  
7 stores I started at, for the most part.

8 Q. So during the entire -- is it 12 years?  
9 Is that about right?

10 A. Yes.

11 Q. -- 12-year period, you were continuously  
12 covering stores in Ohio?

13 A. Correct.

14 Q. But for a couple of years you had -- you  
15 were added some stores in Ohio, I mean, in  
16 Pennsylvania as well; correct?

17 A. Correct.

18 Q. In terms of the State of Ohio, do you  
19 have a sense of how many pharmacies Giant Eagle  
20 has?

21 A. Probably about -- I'm assuming about  
22 120, somewhere around there.

23 Q. And of those, how many -- over your 12  
24 years, I know it's sort of fluctuated a little  
25 bit, how many of those Ohio pharmacies did you

1 cover or have you covered?

2 MR. KOBRIN: If you know.

3 THE WITNESS: 60 to 80.

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

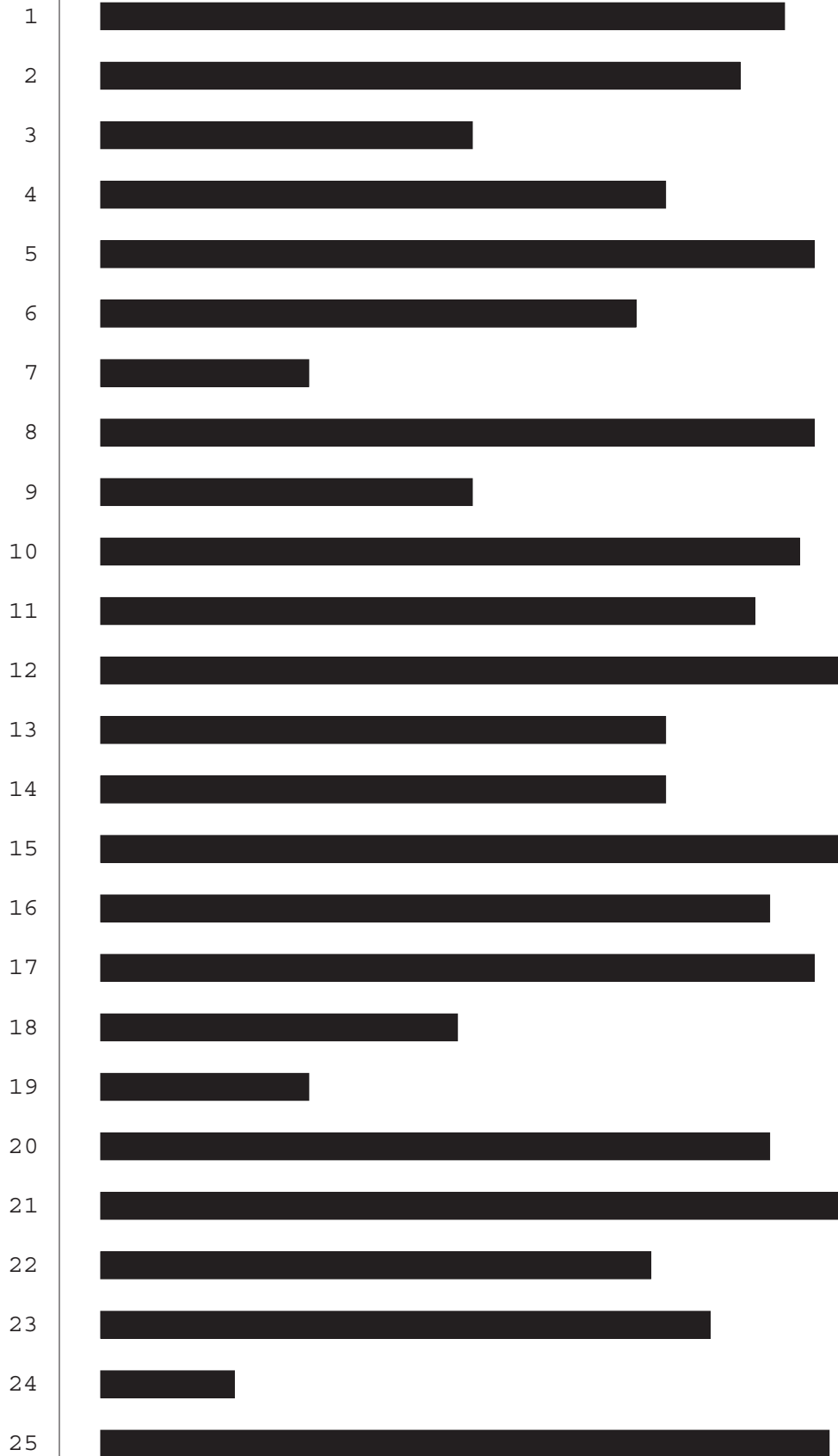
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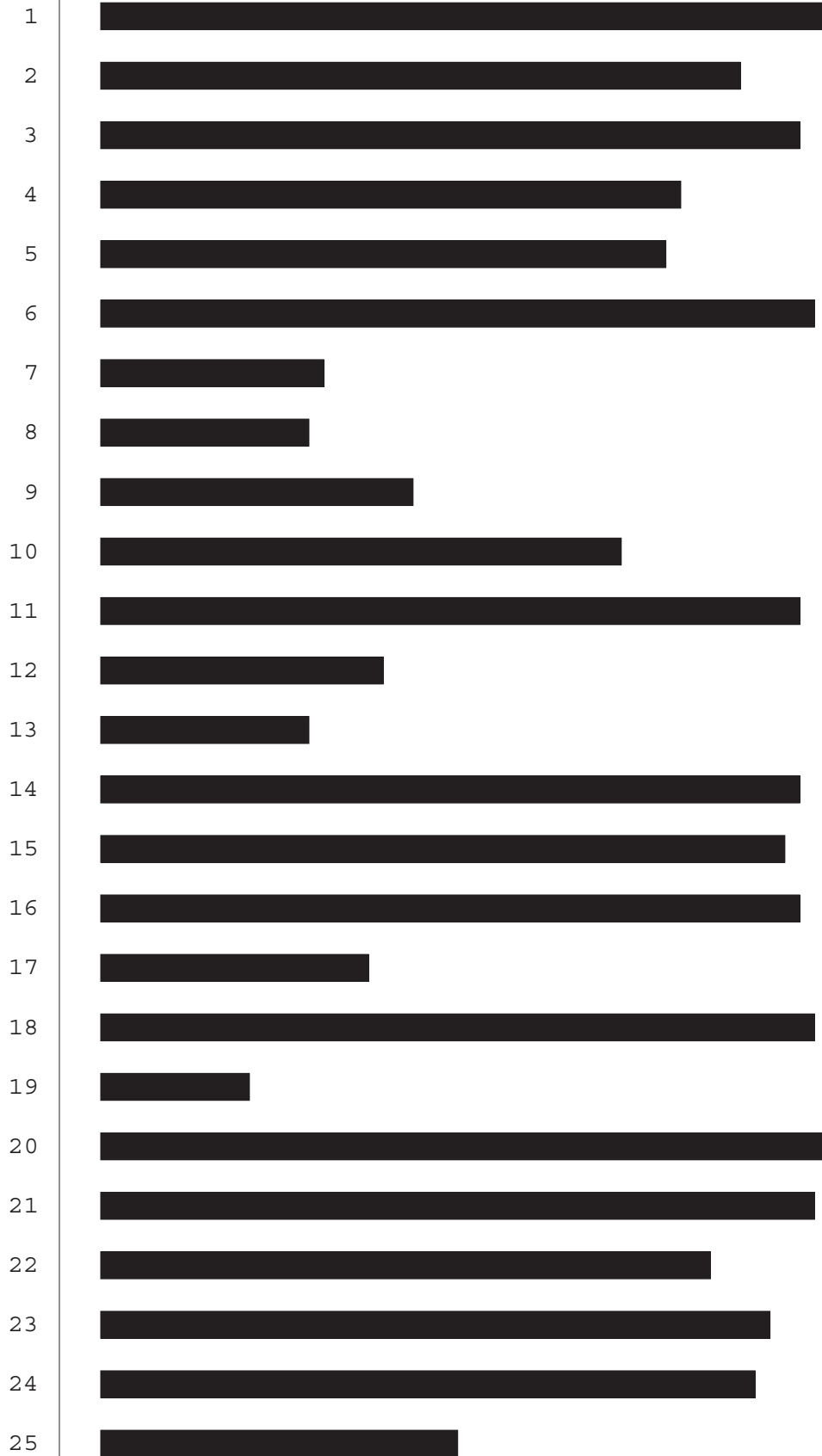
23 [REDACTED]

24 [REDACTED]

25 [REDACTED]















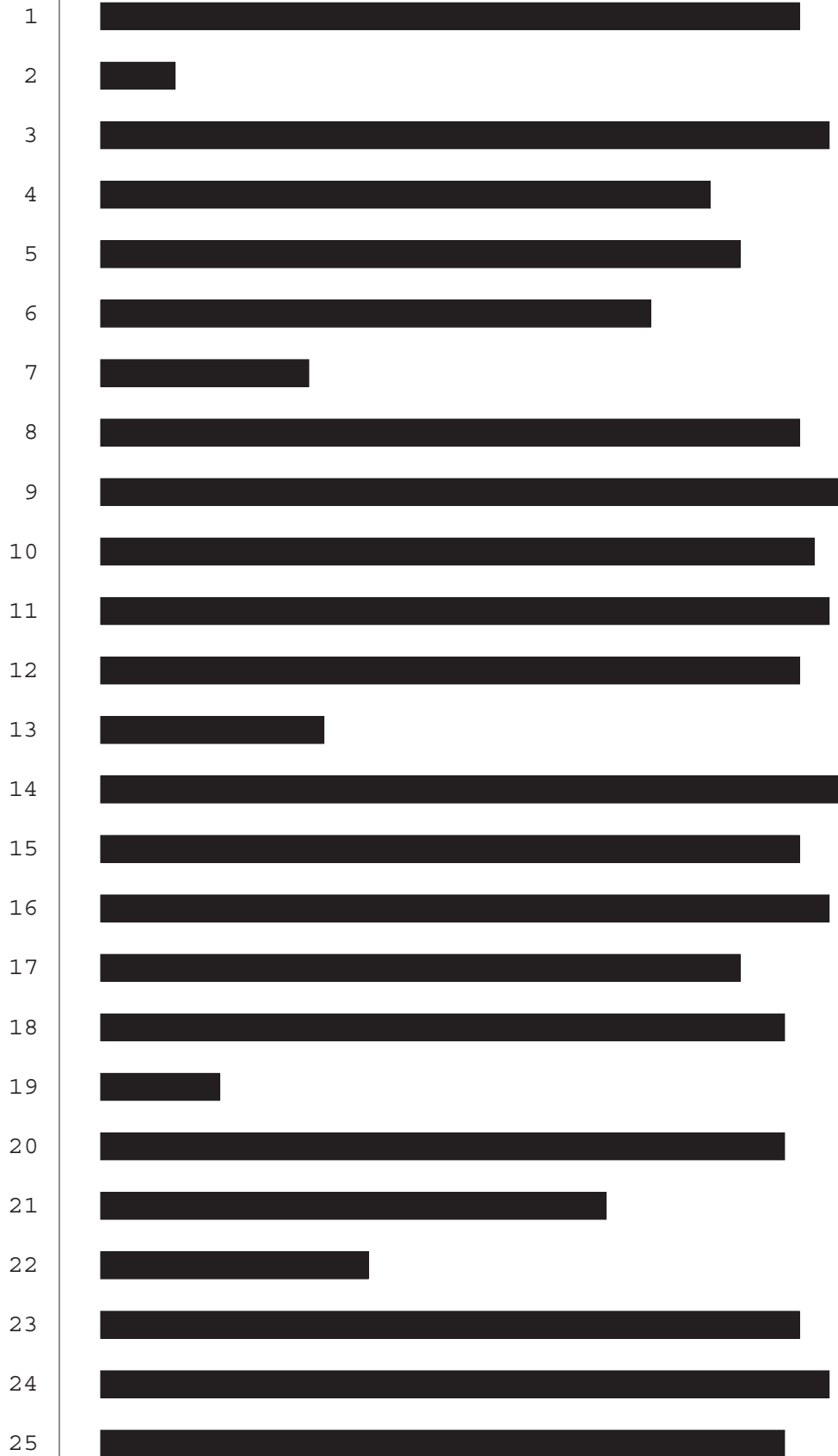








1	[REDACTED]
2	[REDACTED]
3	[REDACTED]
4	[REDACTED]
5	[REDACTED]
6	[REDACTED]
7	[REDACTED]
8	[REDACTED]
9	[REDACTED]
10	[REDACTED]
11	[REDACTED]
12	[REDACTED]
13	[REDACTED]
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15	[REDACTED]
16	[REDACTED]
17	[REDACTED]
18	[REDACTED]
19	[REDACTED]
20	[REDACTED]
21	[REDACTED]
22	[REDACTED]
23	[REDACTED]
24	[REDACTED]
25	[REDACTED]





















1 Q. So if inventory counts were wrong?

2 A. Exactly.

3 Q. Then that would be an example of where  
4 you would get them involved.

5 Any other compliance issues you can think of  
6 where you were interacting with Mr. Millward or  
7 his group?

8 A. Compliance issues, I mean, I guess  
9 compliance is such a big umbrella. If a customer  
10 would come in and we would deem the prescription  
11 wasn't valid and we weren't going to fill it, we  
12 just wanted to make sure everyone knew about it  
13 and these are the reasons why and we're going to  
14 send them away.

15 Q. Would you reach out to Mr. Millward or  
16 someone in his group each time a pharmacy would  
17 decide not to fill a prescription, or how would  
18 there be -- how would the decision be made as to  
19 whether or not to contact them or not?

20 MR. KOBRIN: Object to form. Who is  
21 "them"?

22 MR. HUDSON: Mr. Millward or his group.

23 THE WITNESS: Only if there was a  
24 situation where the customer would come back and  
25 say, I'm going to sue you, or there was any kind

1 of threat made. The majority of the time, I think  
2 these people know if you're giving it back to  
3 them. They're out the door.

4 Q. Did any of the pharmacies in your  
5 territory ever keep logs of prescriptions that  
6 were attempted to be filled or not filled by the  
7 pharmacists?

8 MR. KOBRIN: Object to form.

9 THE WITNESS: No.

10 BY MR. HUDSON:

11 Q. As you sit here today, do you have any  
12 sense of how many times pharmacists in your  
13 territory would decide not to fill a prescription?

14 MR. KOBRIN: During the entire time?

15 MR. HUDSON: Yeah, between 2009 and  
16 2016.

17 MR. KOBRIN: If you can give an answer.

18 THE WITNESS: I can't speculate. I can  
19 tell you a hundred percent it happens.

20 BY MR. HUDSON:

21 Q. Did any pharmacist in your territory  
22 between 2009 and 2016 ever bring to your attention  
23 any concerns about patients or prescribers or pain  
24 clinics where patients were coming and trying to  
25 fill prescriptions and the pharmacist felt like

1     they may not be valid or they'd be at risk of  
2     diversion?

3             MR. KOBRIN:   Object to form.

4             THE WITNESS:   Yes.

5     BY MR. HUDSON:

6             Q.   How many times would you say that  
7     happened?

8             A.   Again, with the new law being capped, I  
9     couldn't even speculate.  I know that it happens.

10            Q.   Do you remember any of the details  
11   around any times where pharmacists ever raised  
12   concerns with you?

13            A.   The majority of the time, if the doctor  
14   has a bad name in the area.  So they wanted to  
15   know if they could not fill any prescriptions from  
16   Dr. Bencivengo.  We don't -- we support them a  
17   hundred percent on their decision to fill or not  
18   fill, but we don't support just blankly saying  
19   we're not filling any prescriptions from a doctor.

20            We have a process in place.  You do your due  
21   diligence.  You make a decision that way.  If part  
22   of the due diligence says this guy doesn't need a  
23   script, he's a bad doctor, then send them on the  
24   way.  We don't have any list of doctors that we  
25   don't fill for.

1           Q.    In your territory in Ohio, from time to  
2   time were there doctors identified by pharmacists  
3   that they believe to be bad doctors?

4           A.    Yes.

5           Q.    Did you or anyone else at Giant Eagle  
6   keep a log or a record of bad doctors in Ohio that  
7   a prescription being written by them at least  
8   raised a red flag of concern?

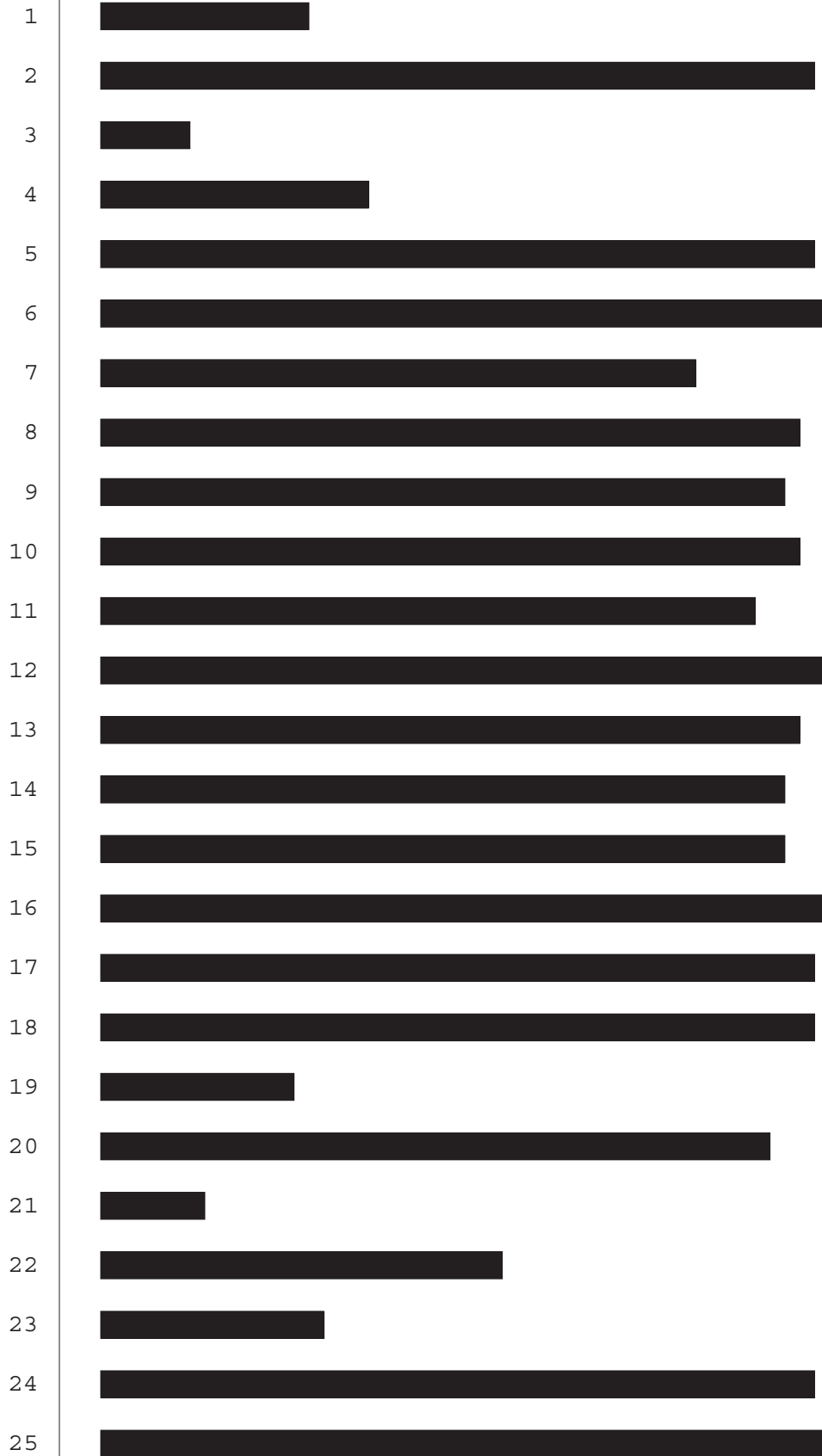
9           A.    Again, no official log.  I've walked  
10  into many stores and saw something hand scribbled  
11  on a bulletin board, be careful of these three  
12  doctors; not do not fill, just but be careful.

13          Q.    Was that more of an individual store to  
14  individual store?

15          A.    An FYI.  If I'm coming in as a floater  
16  that day, this is what I should look for.

17          Q.    Was there any sort of log or -- I'm  
18  trying to think of a good -- report, any way that  
19  Giant Eagle is memorializing diversion risks at  
20  the pharmacy level in terms of bad doctors or  
21  anything else that would cause there to be a  
22  concern about the diversion of controlled  
23  substances?

24               MR. KOBRIN:  Object to form.  What do  
25  you mean by bad doctors?

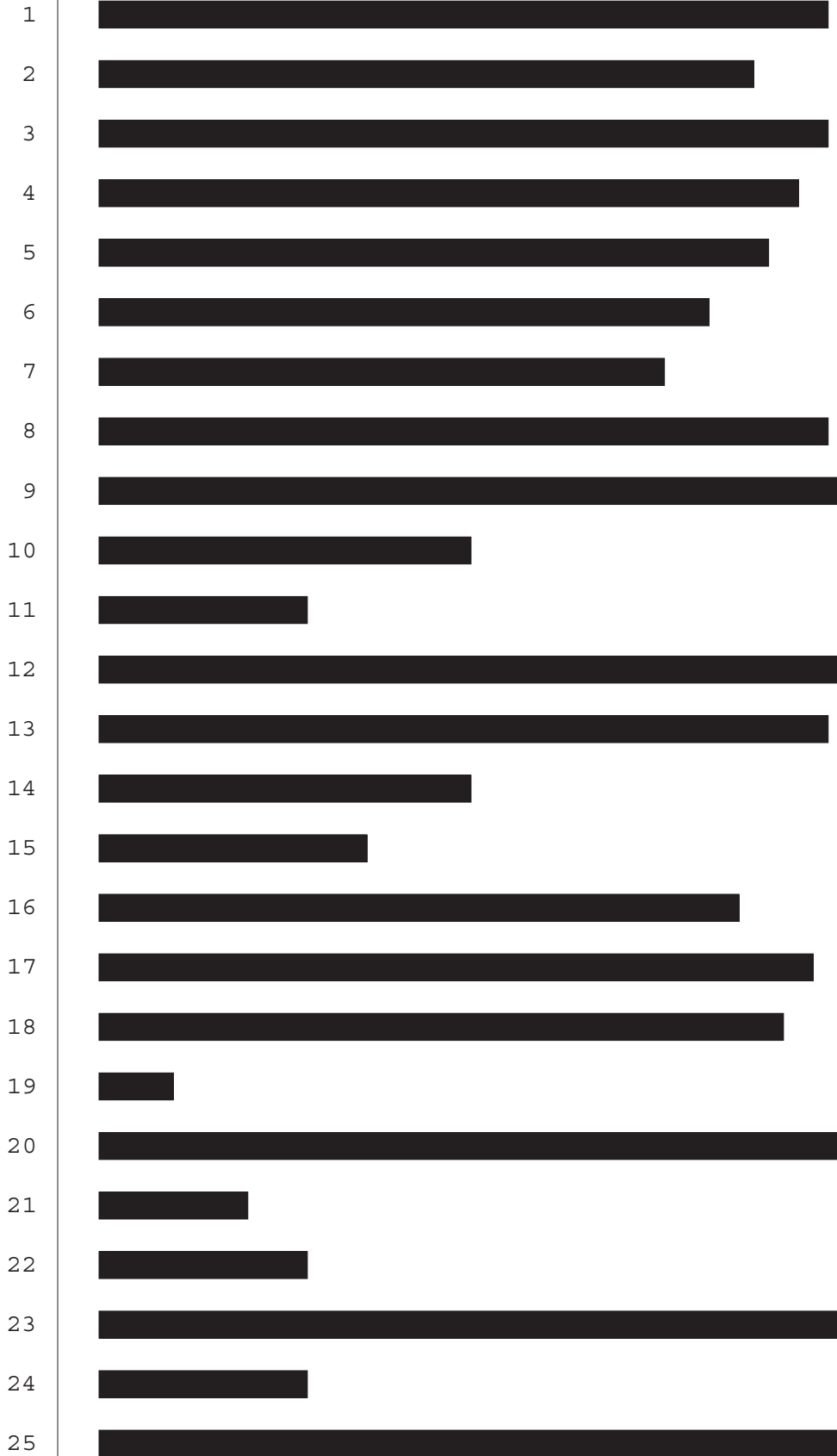


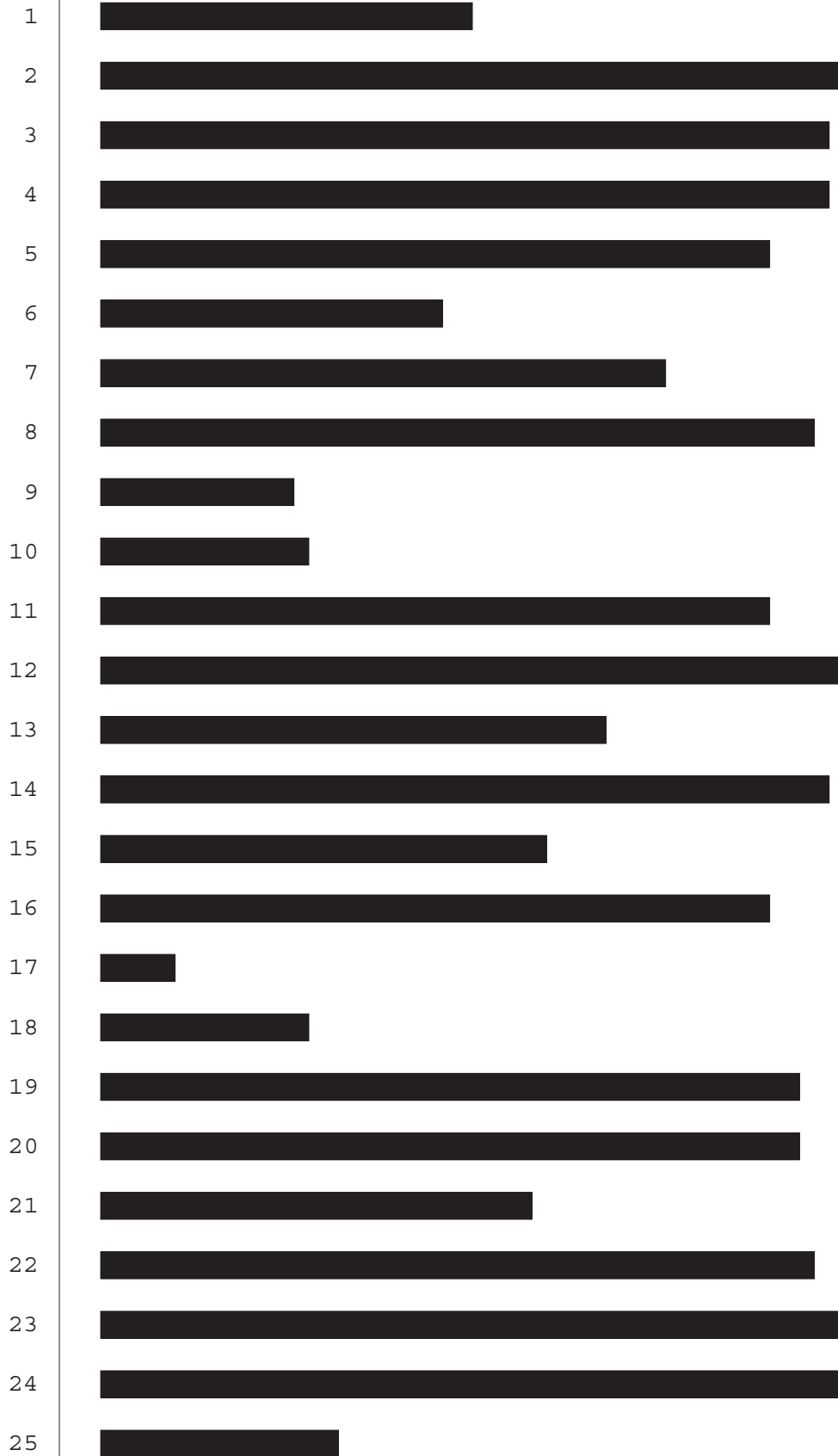






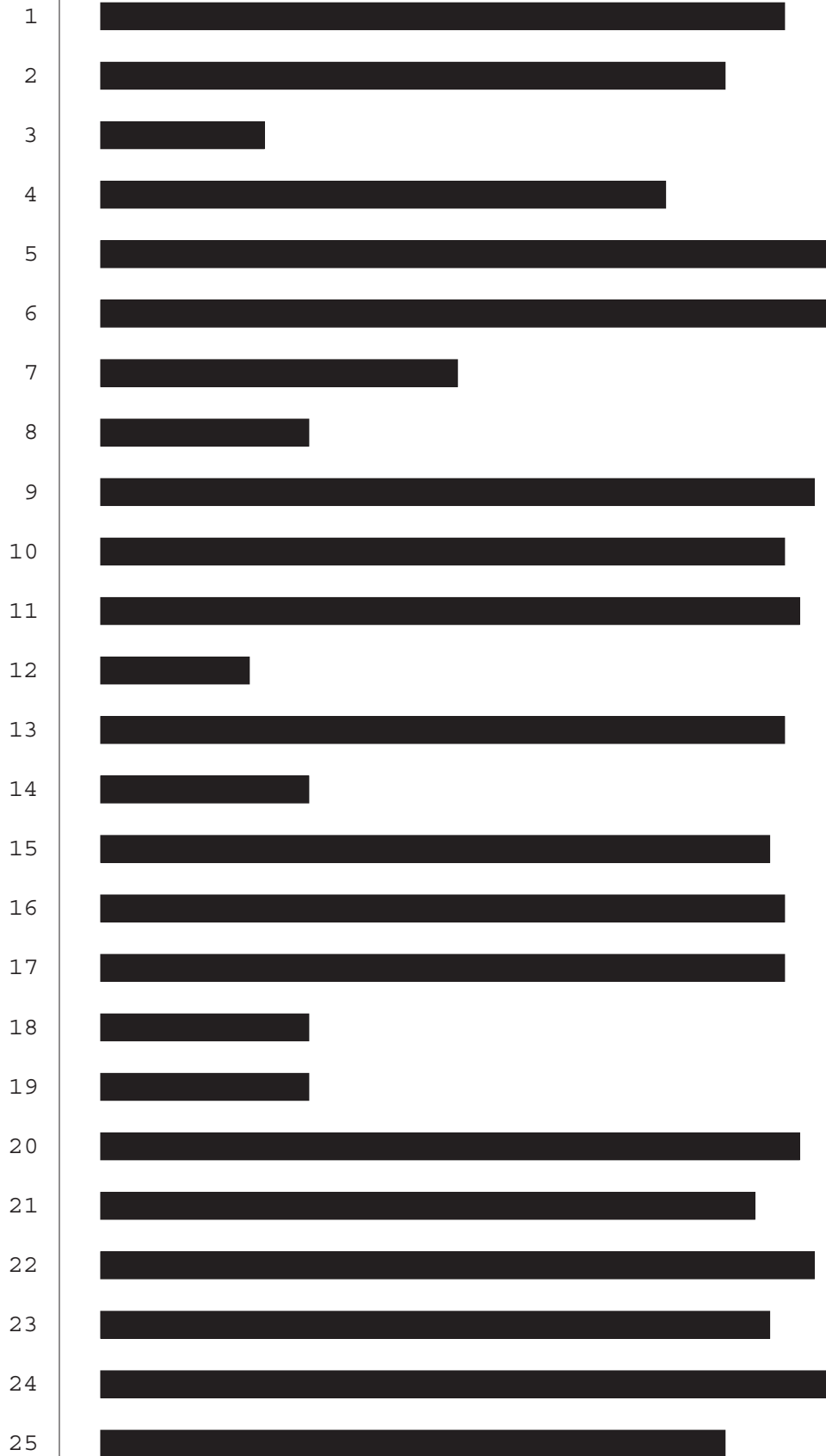




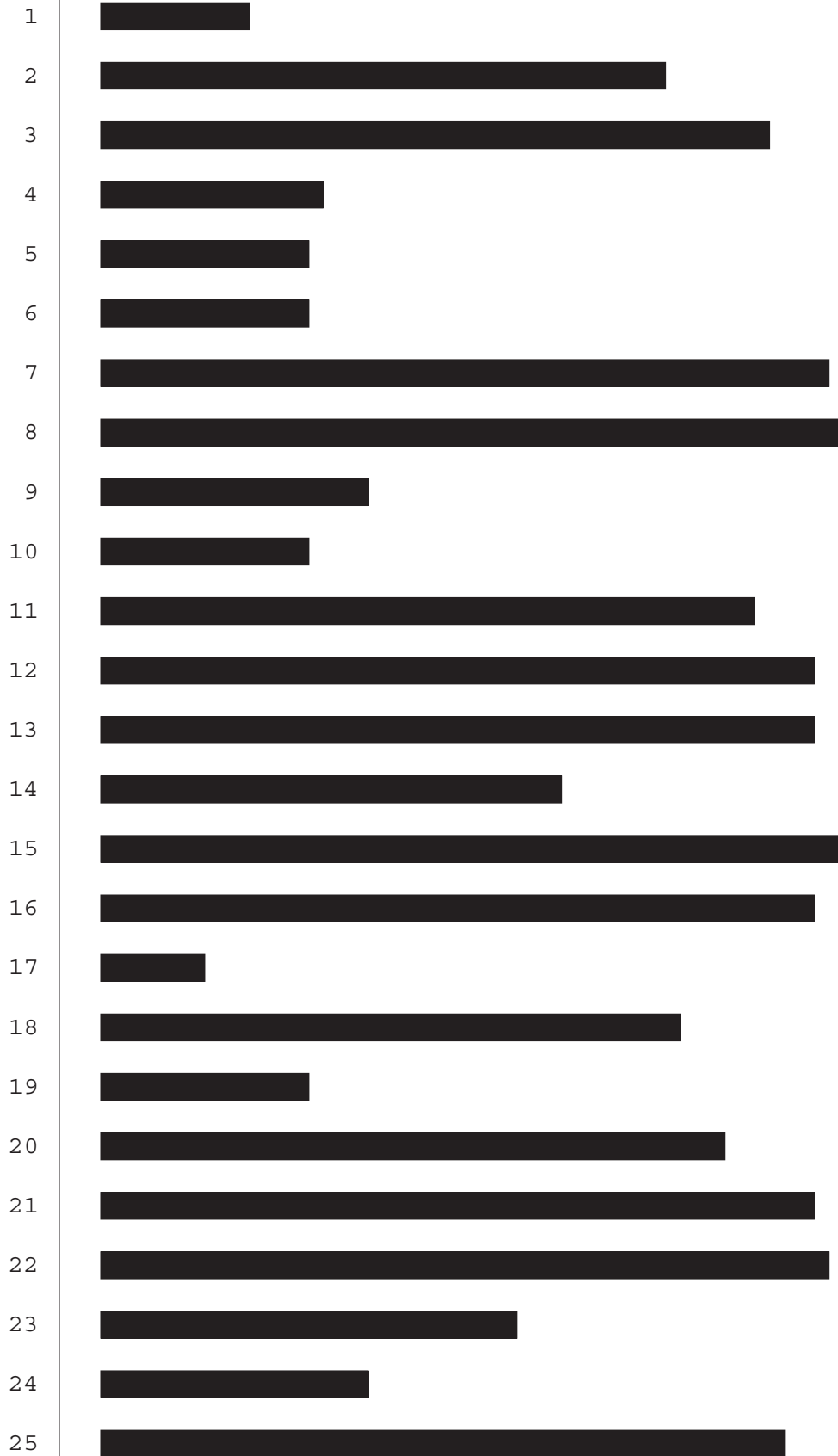












1 using the term suspicious orders and flagged  
2 orders concurrently or interchangeably.

3 MR. HUDSON: Because they are.

4 MR. KOBRIN: I don't think they are to  
5 the witness. I think you're causing confusion  
6 with him regarding flagged and suspicious orders.

7 THE WITNESS: Okay. That makes sense.

8 MR. HUDSON: I'll let you clear that up.

9 MR. KOBRIN: Well, I'm flagging that  
10 issue for you.

11 Should we take a break?

12 MR. HUDSON: Yeah, that's fine. Take a  
13 quick break.

14 THE VIDEOGRAPHER: We are going off the  
15 record. The time is 3:11 p.m.

16 (Recess from 3:11 p.m. to 3:42 p.m.)

17 THE VIDEOGRAPHER: We're going back on  
18 the record. The time is 3:42 p.m.

19 BY MR. HUDSON:

20 Q. Welcome back, Mr. Bencivengo. Before  
21 the break, we were talking about pharmacists and  
22 potential red flags for diversion, and you had  
23 made reference to OARRS reports and CBTs, and that  
24 kind of took us down this road.

25 So I want to go back to my original question

1       which was: For Giant Eagle pharmacists, was there  
2       any sort of uniform criteria that existed to apply  
3       to try to determine whether to fill a prescription  
4       or not?

5               MR. KOBRIN: Object to form.

6               THE WITNESS: We have document control  
7       dispensing. In that document it lists the red  
8       flags, what to look for to do the due diligence  
9       and to make that decision.

10      BY MR. HUDSON:

11             Q. As you sit here today, do you have a  
12       recollection of what those red flags are?

13             MR. KOBRIN: Object to form. Do you  
14       want to show him the document?

15             MR. HUDSON: I don't have it.

16             THE WITNESS: I mean, I can't name every  
17       single one of them, but obviously the age, the  
18       distance, the distance they drive, the distance  
19       from the doctor to the pharmacy and the distance  
20       where they live and to the pharmacy. If they  
21       mention the drugs by the street names, Percs,  
22       Vics. Any kind of combination product, the  
23       trinities, the pain reliever, the muscle relaxer,  
24       those are usually a sign that calls might need to  
25       be made.

1 BY MR. HUDSON:

2 Q. And in Ohio in your 12 years there, in  
3 your experience, were there patients coming into  
4 pharmacies that were trying to get drugs that  
5 weren't for medically necessary purposes?

6 MR. KOBRIN: Object to form.

7 THE WITNESS: Yes.

8 BY MR. HUDSON:

9 Q. And how did you come to that opinion?

10 A. As a practicing pharmacist or as a  
11 person in my role right now?

12 Q. Yeah, just as a whole, in other words,  
13 really through those 12 years in your role as a  
14 PDL.

15 A. By doing the due diligence we needed to  
16 do to fill those prescriptions, by viewing the red  
17 flags, and then once it was determined, that's  
18 when it was determined this wasn't necessary.

19 Q. Did you have enough interaction with  
20 pharmacists and just the communities of Ohio to  
21 get a sense of whether or not opioid diversion or  
22 opioid abuse was a problem in the communities  
23 where your territory existed?

24 MR. KOBRIN: Object to form.

25 THE WITNESS: Enough with the







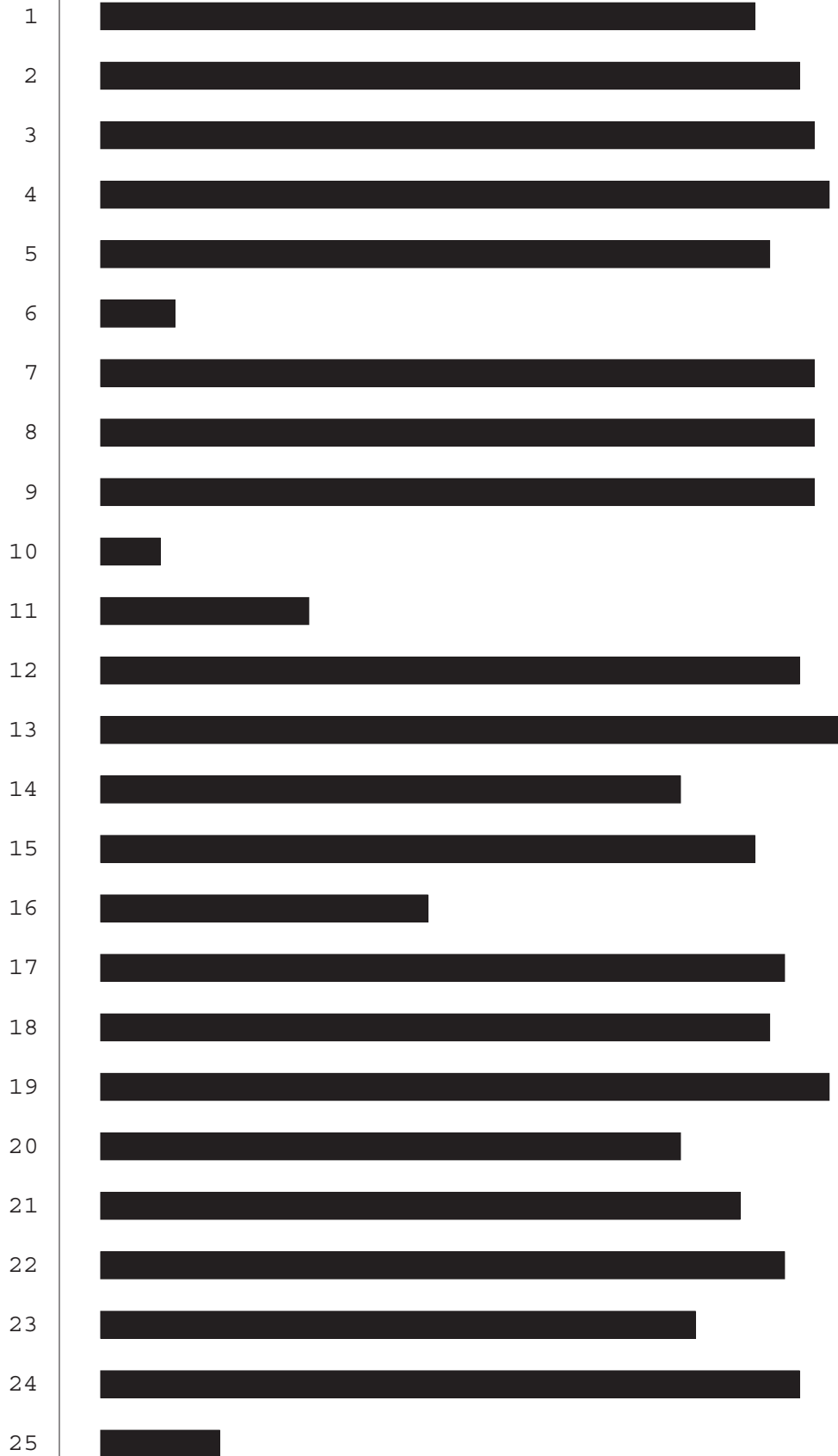


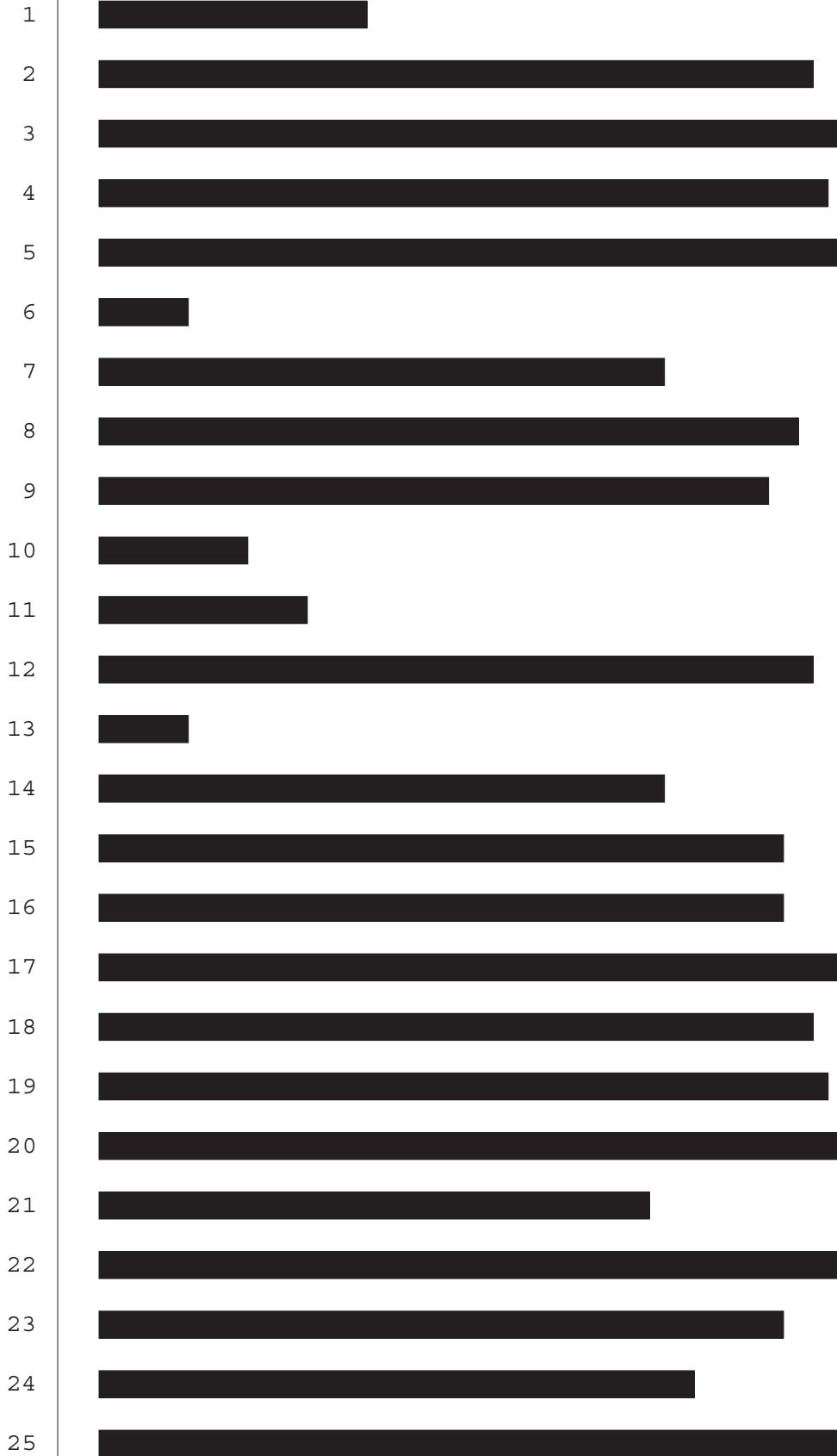






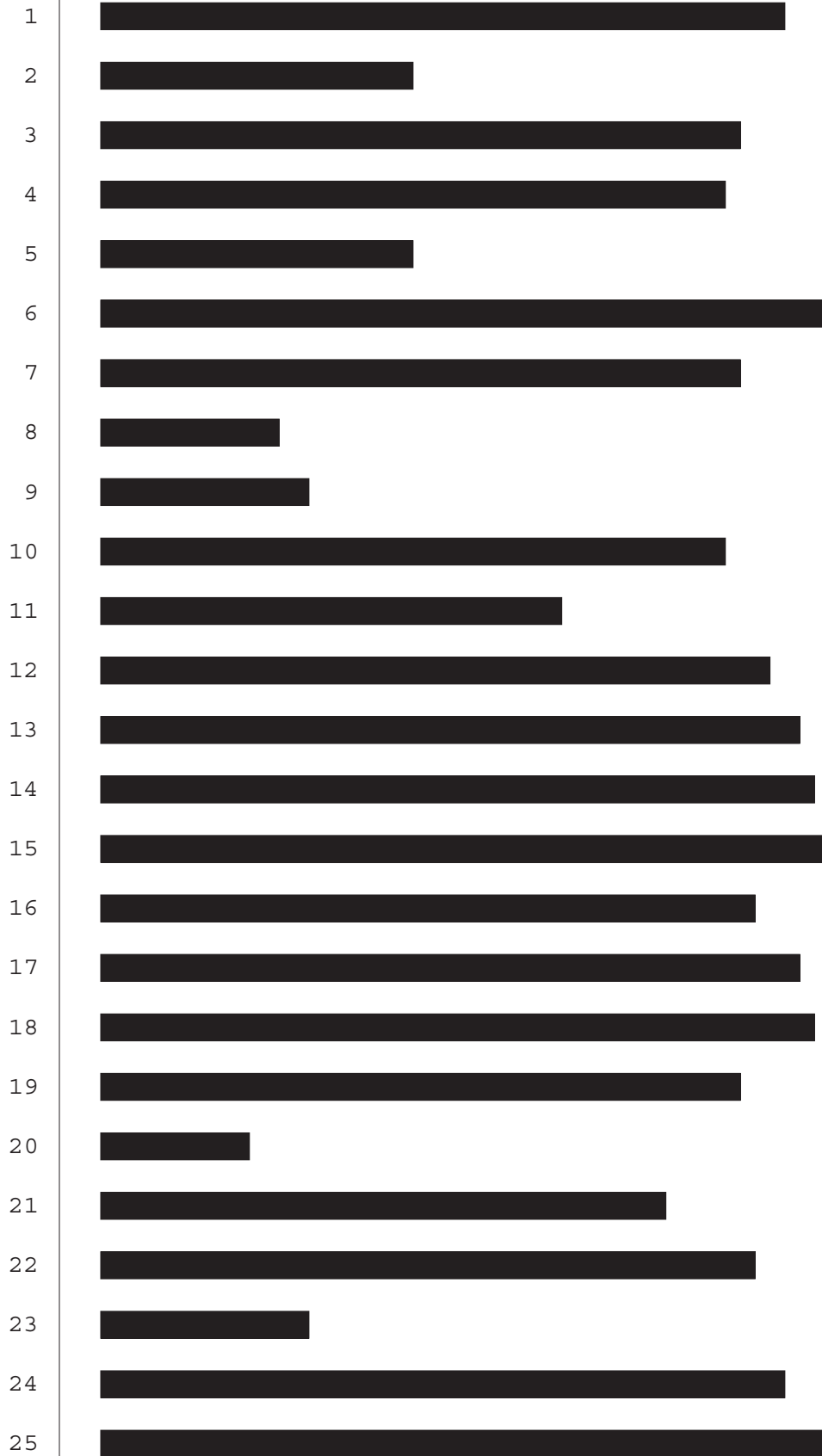








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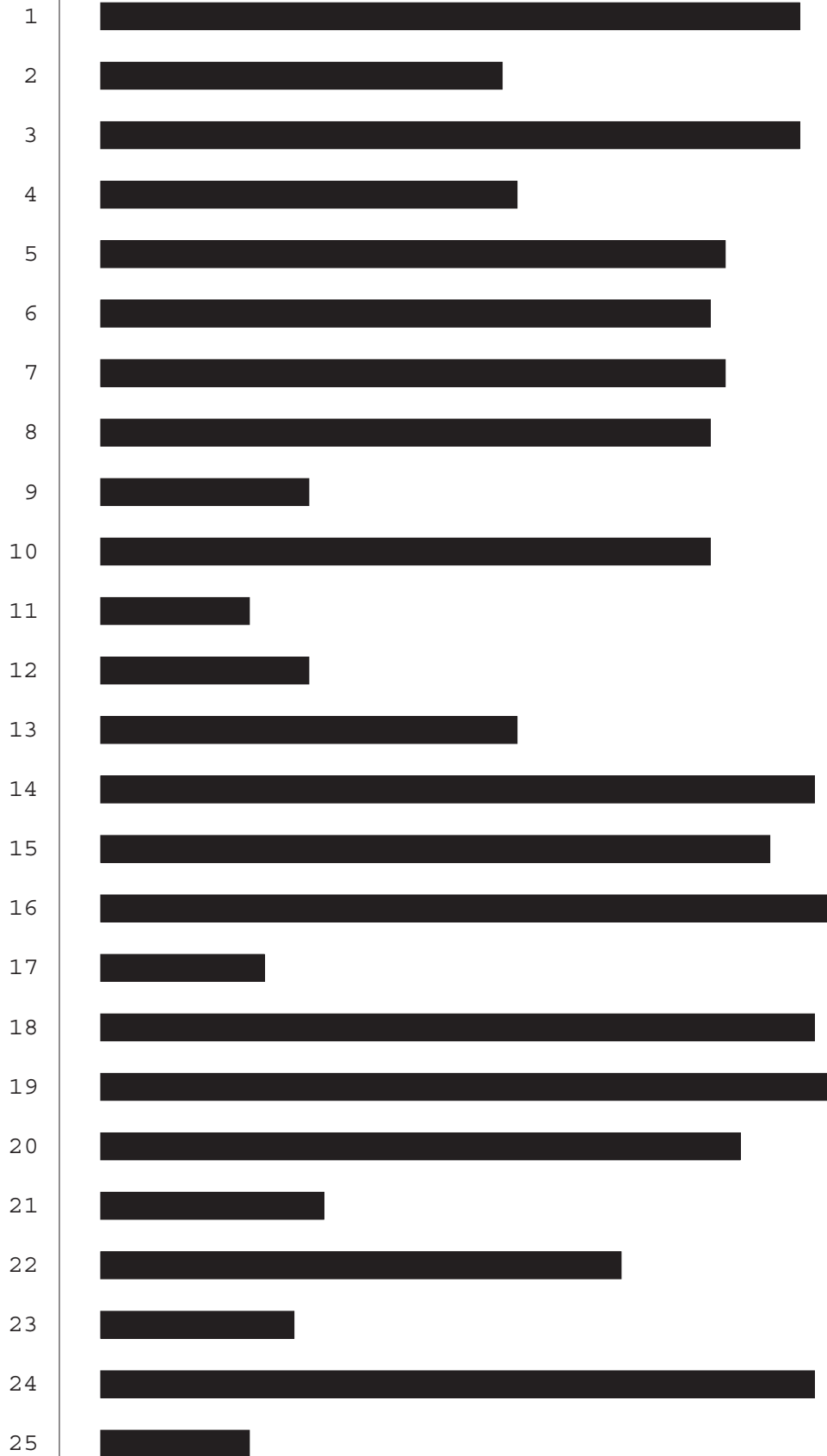














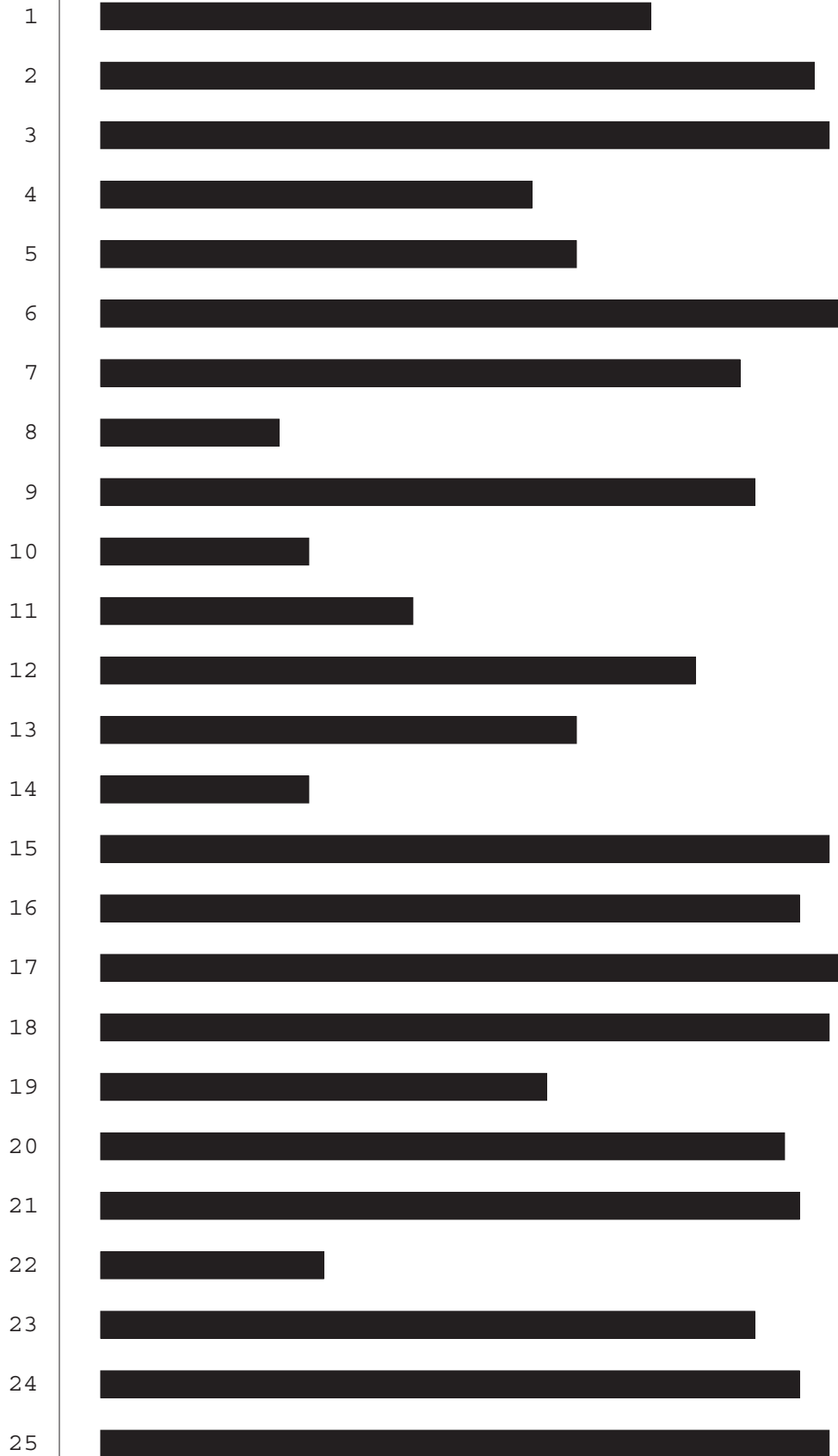






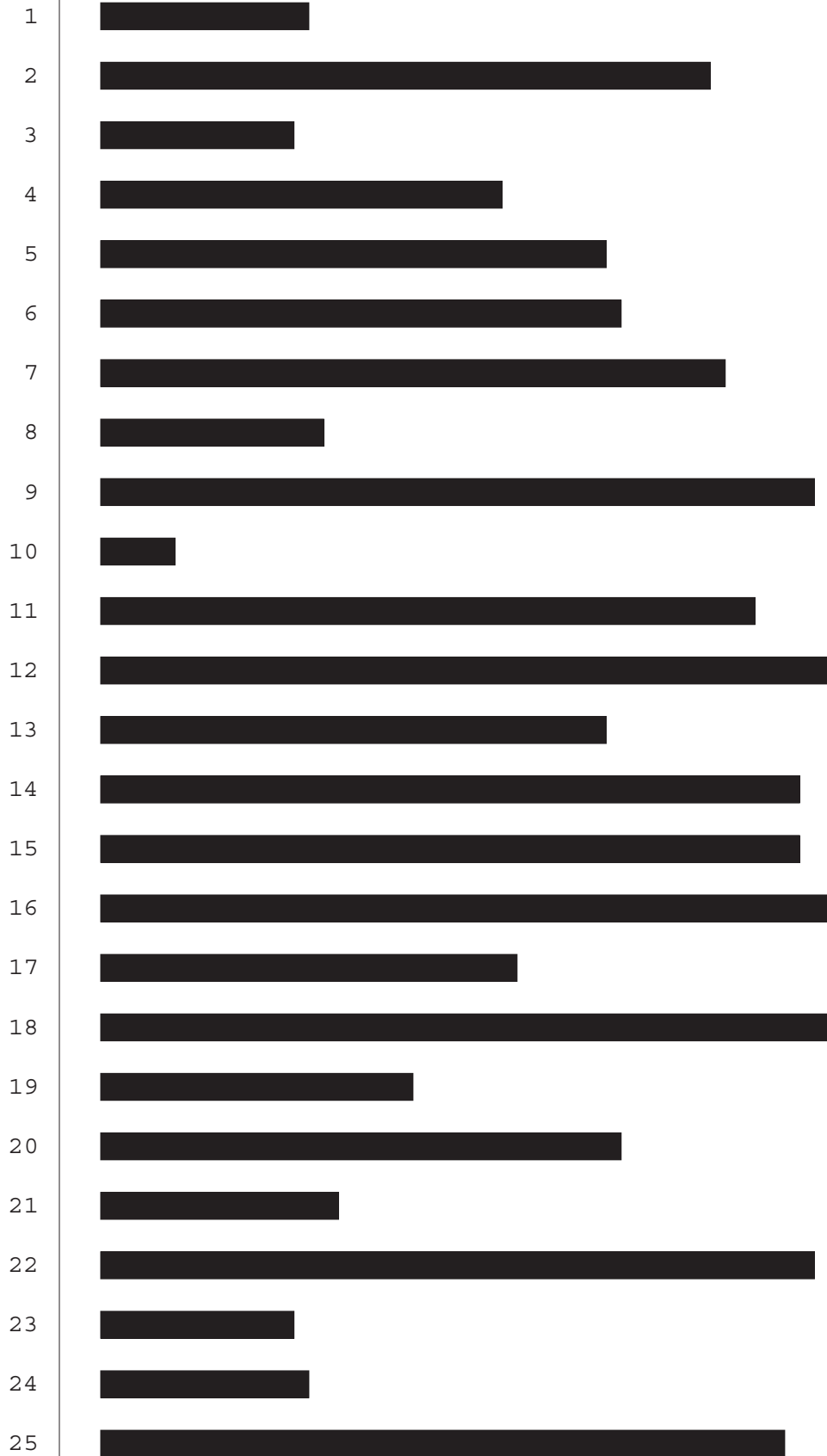








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6 THE VIDEOGRAPHER: We're going off the  
7 record. The time is 4:20 p.m.

8 (Recess from 4:20 p.m. to 4:21 p.m.)

9 THE VIDEOGRAPHER: We're going back on  
10 the record. The time is 4:22 p.m.

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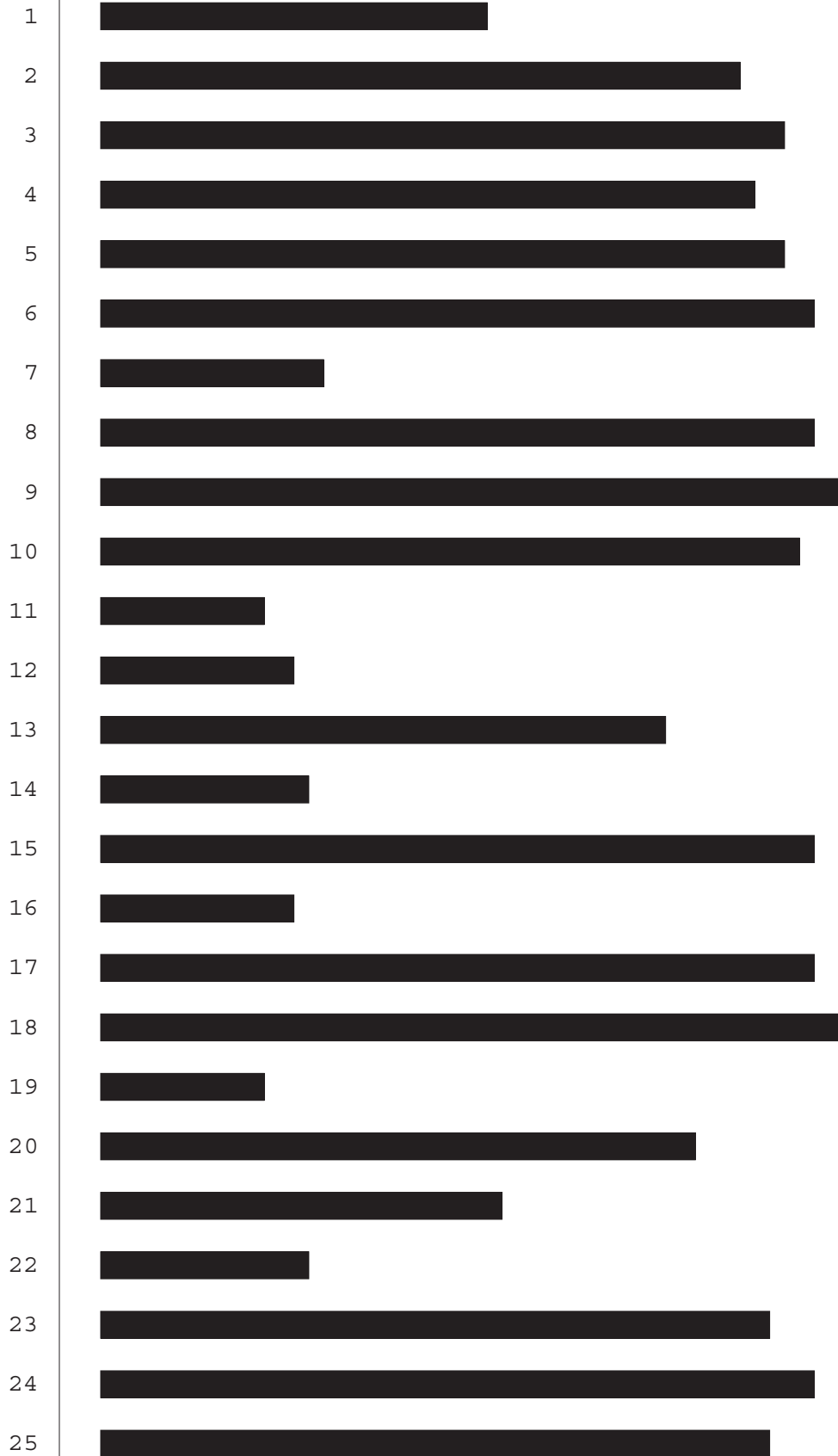




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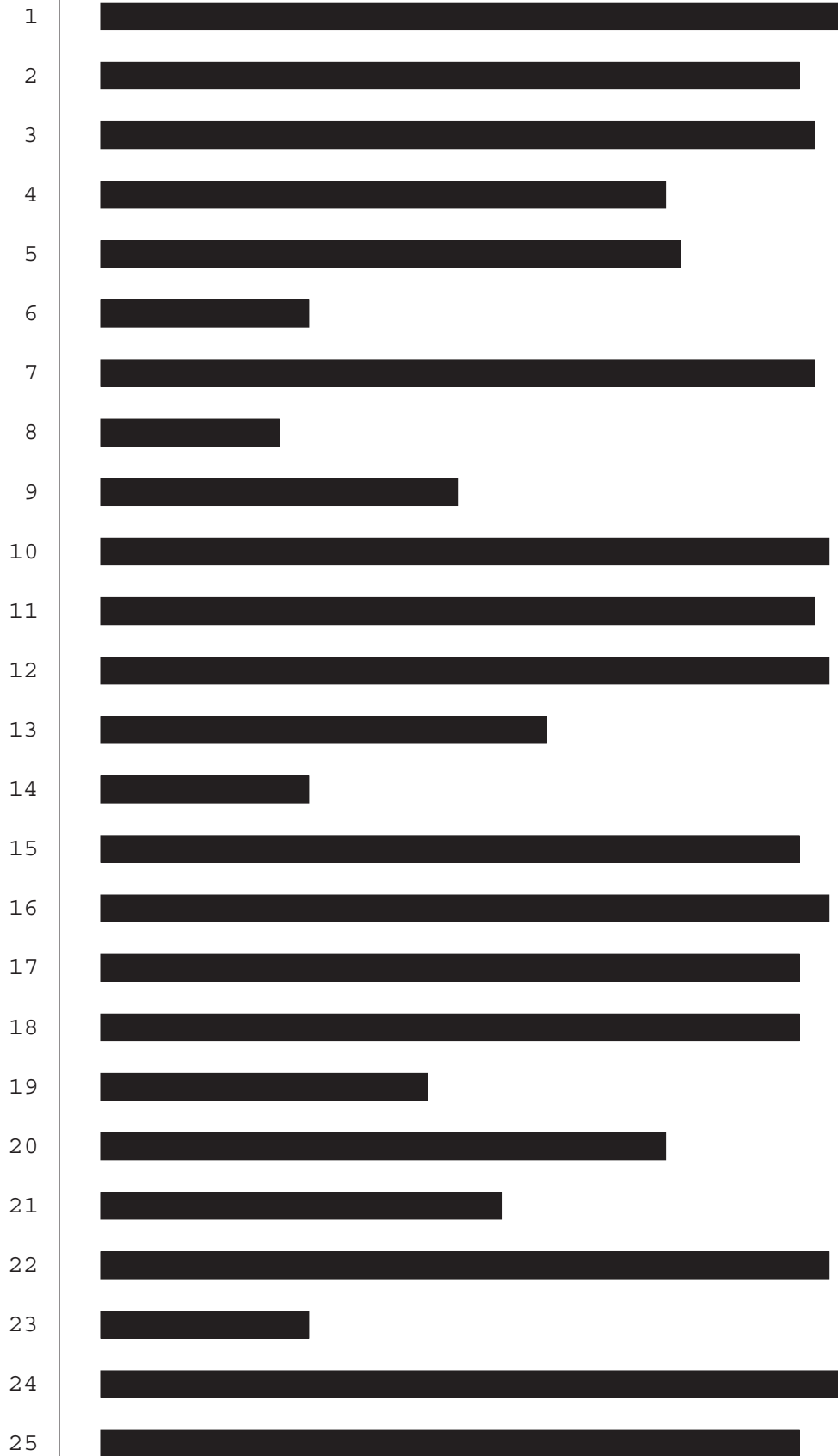




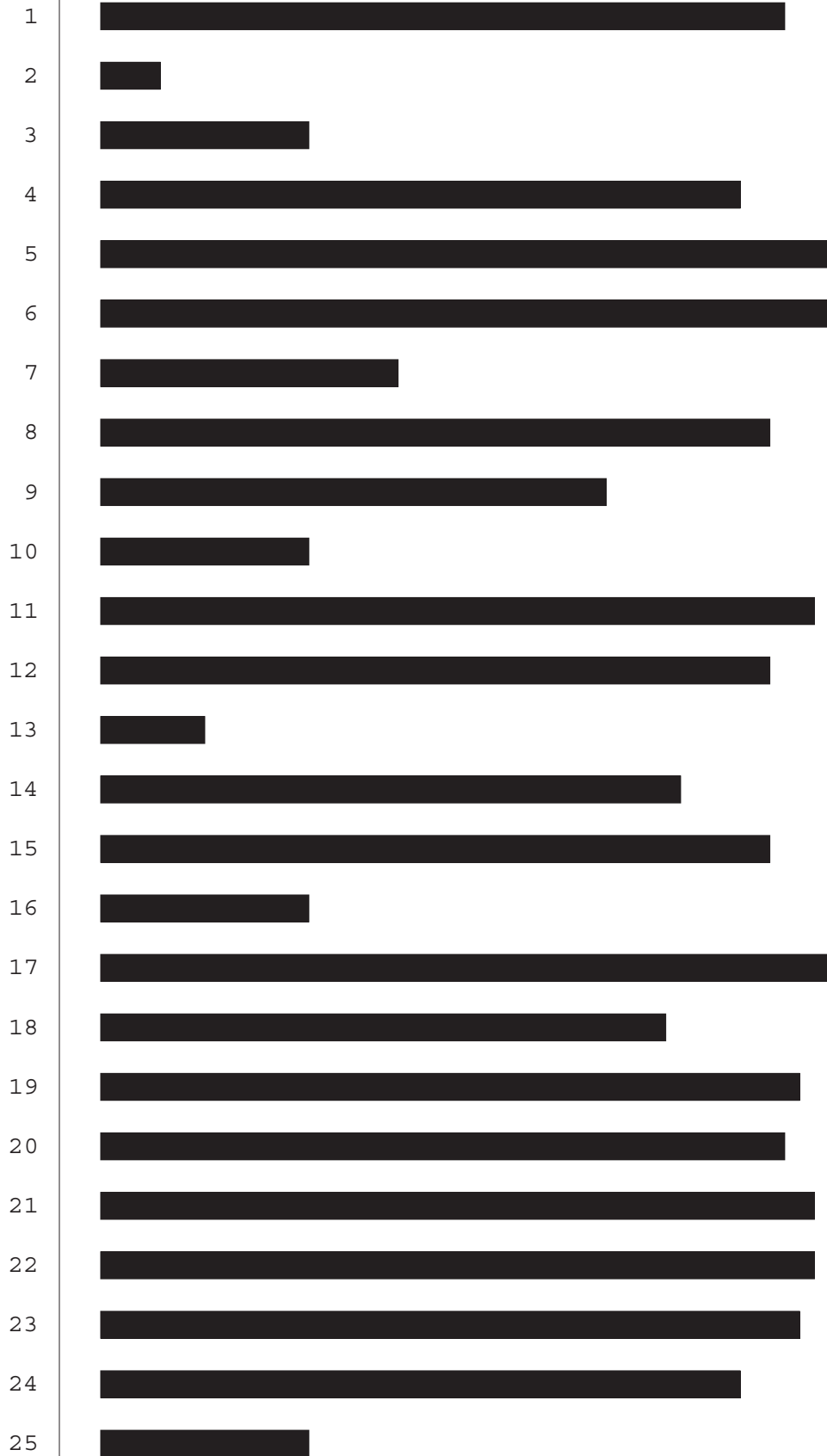


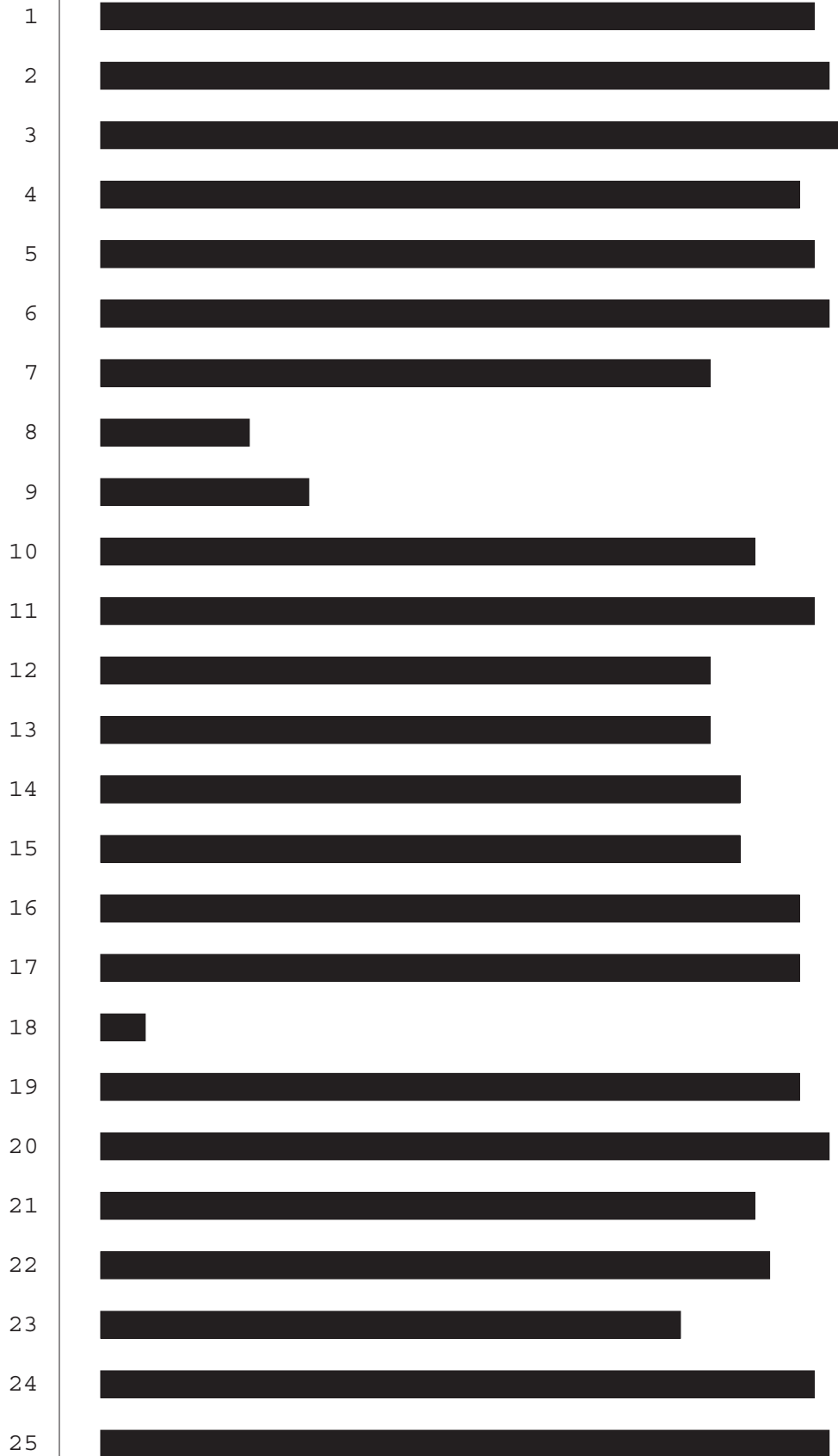












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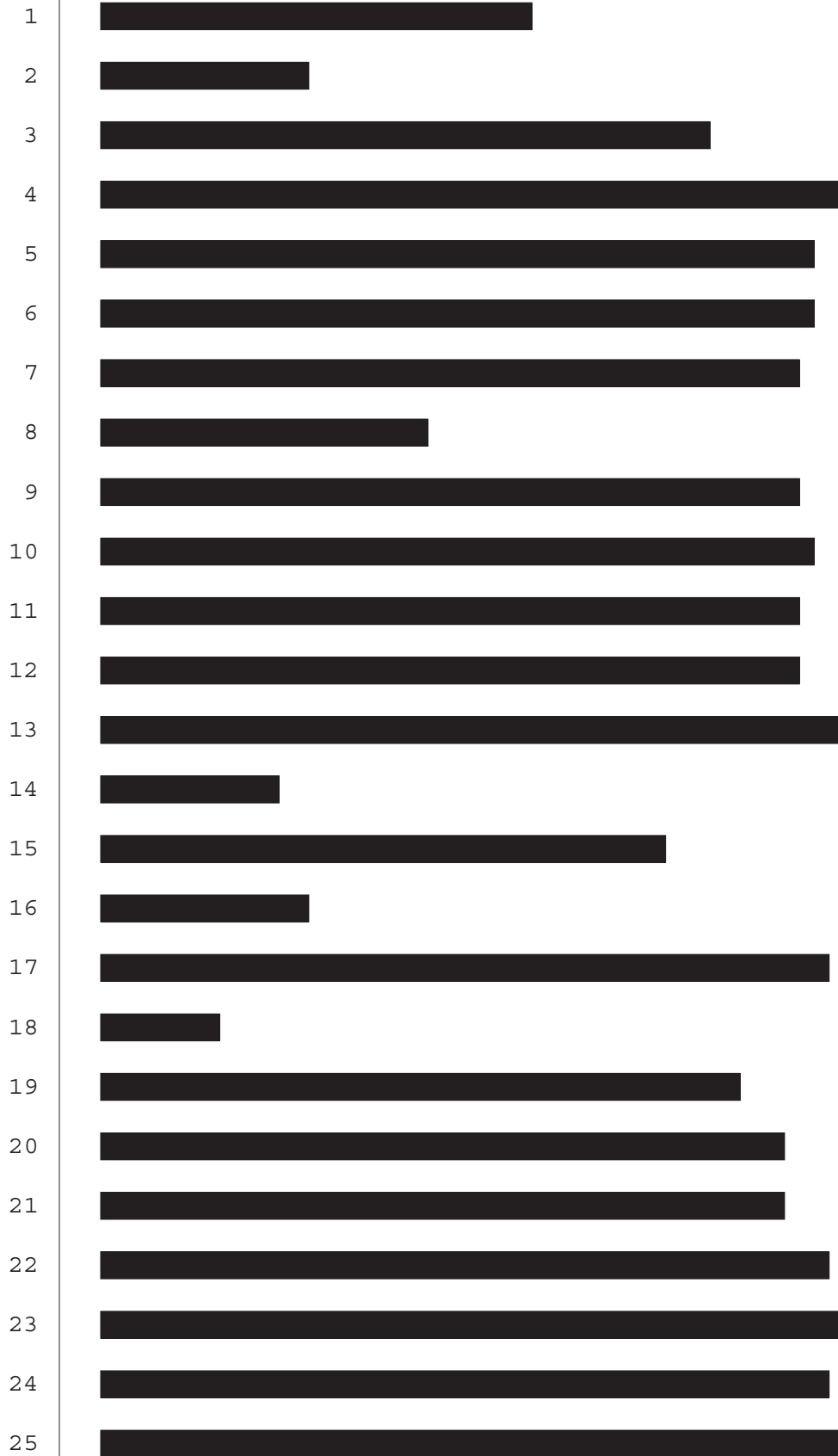








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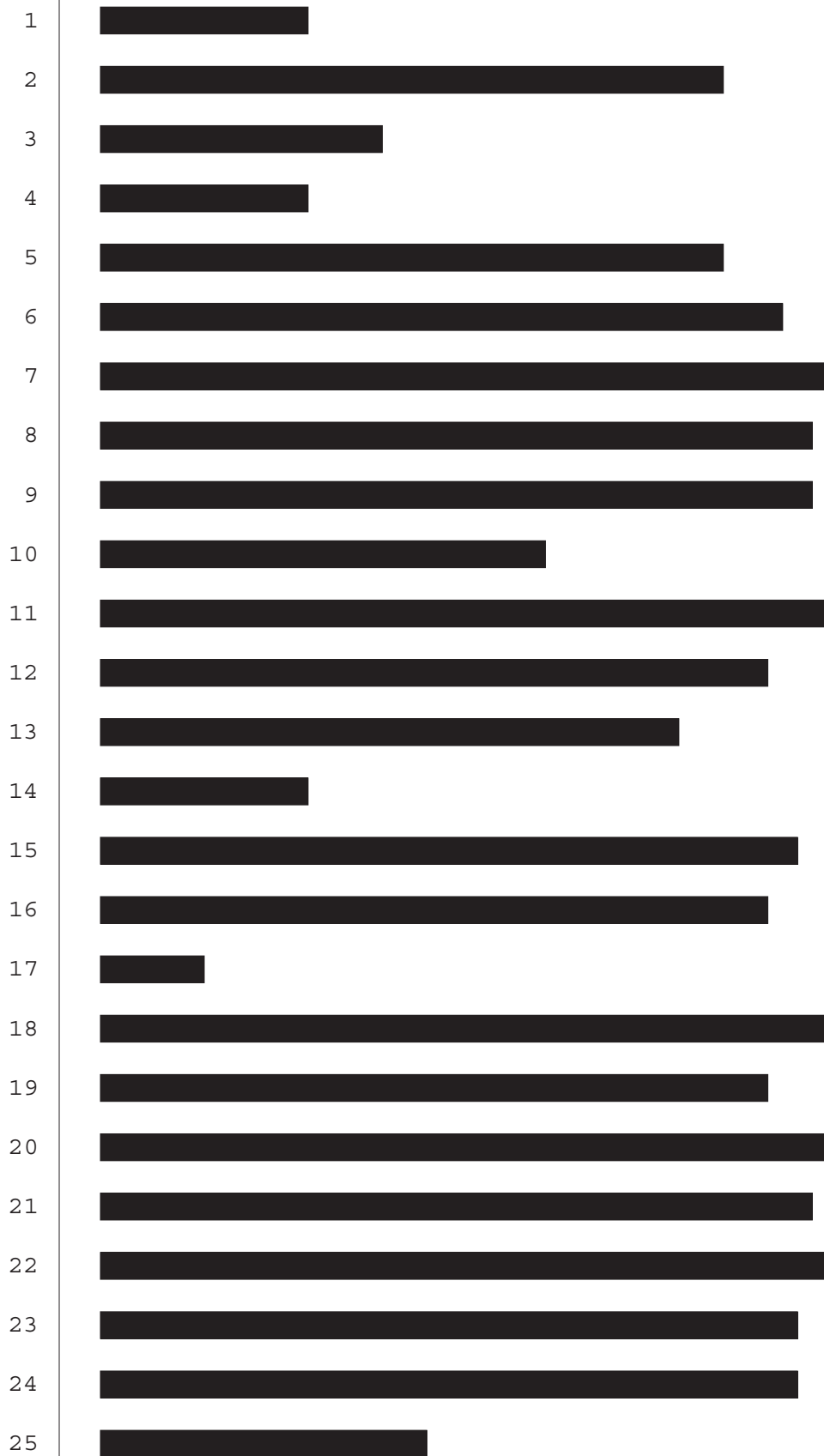




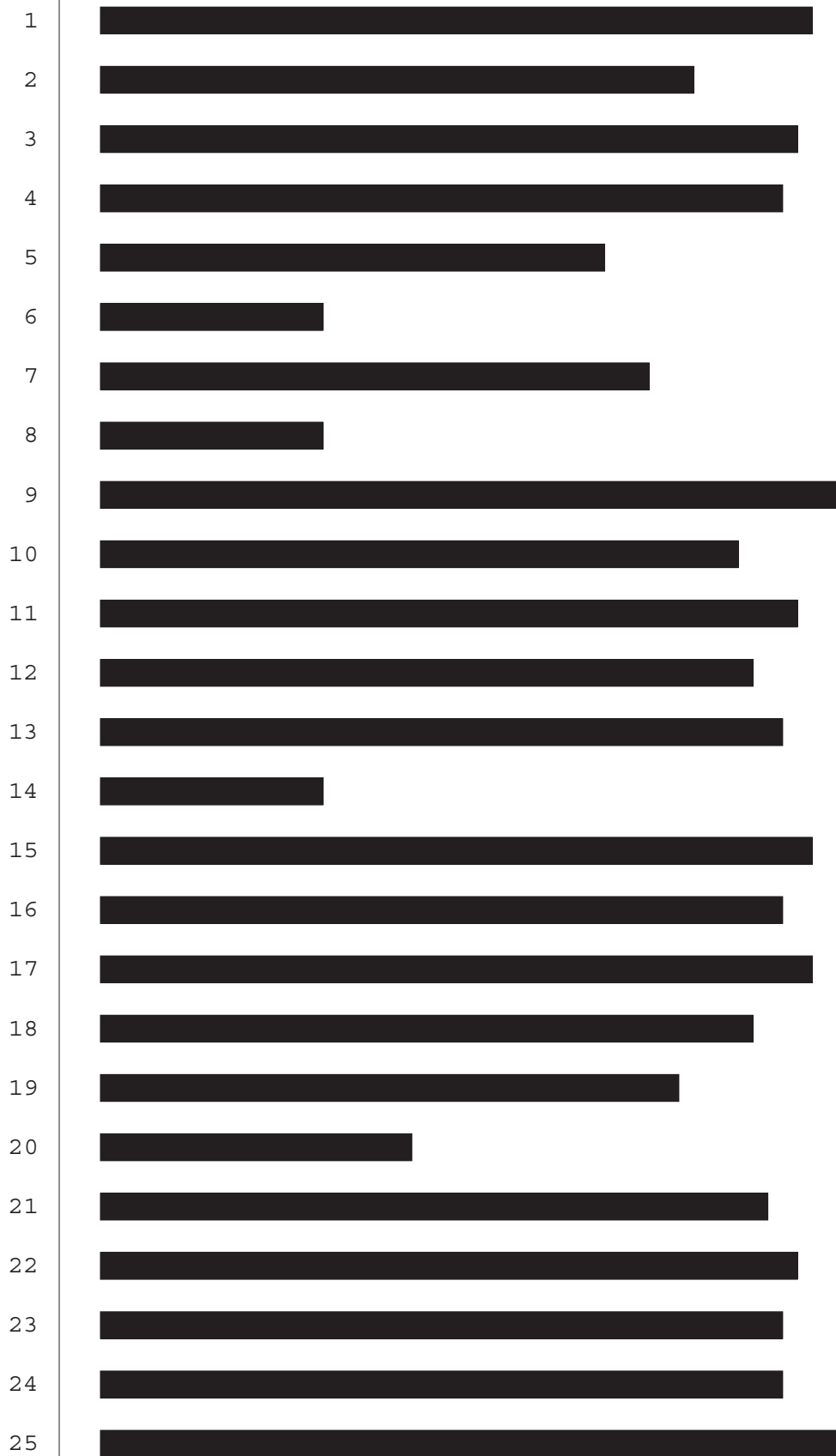




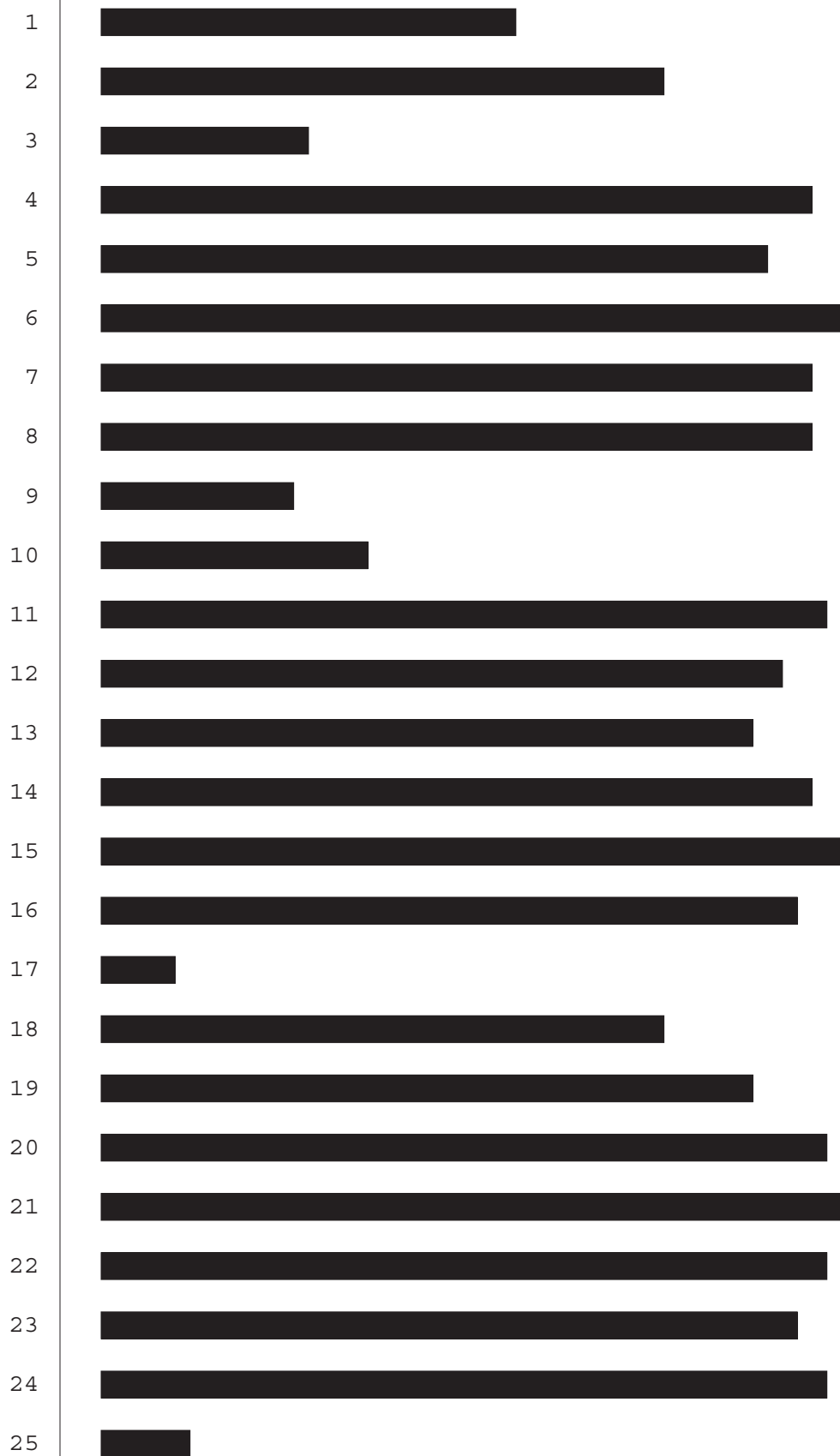


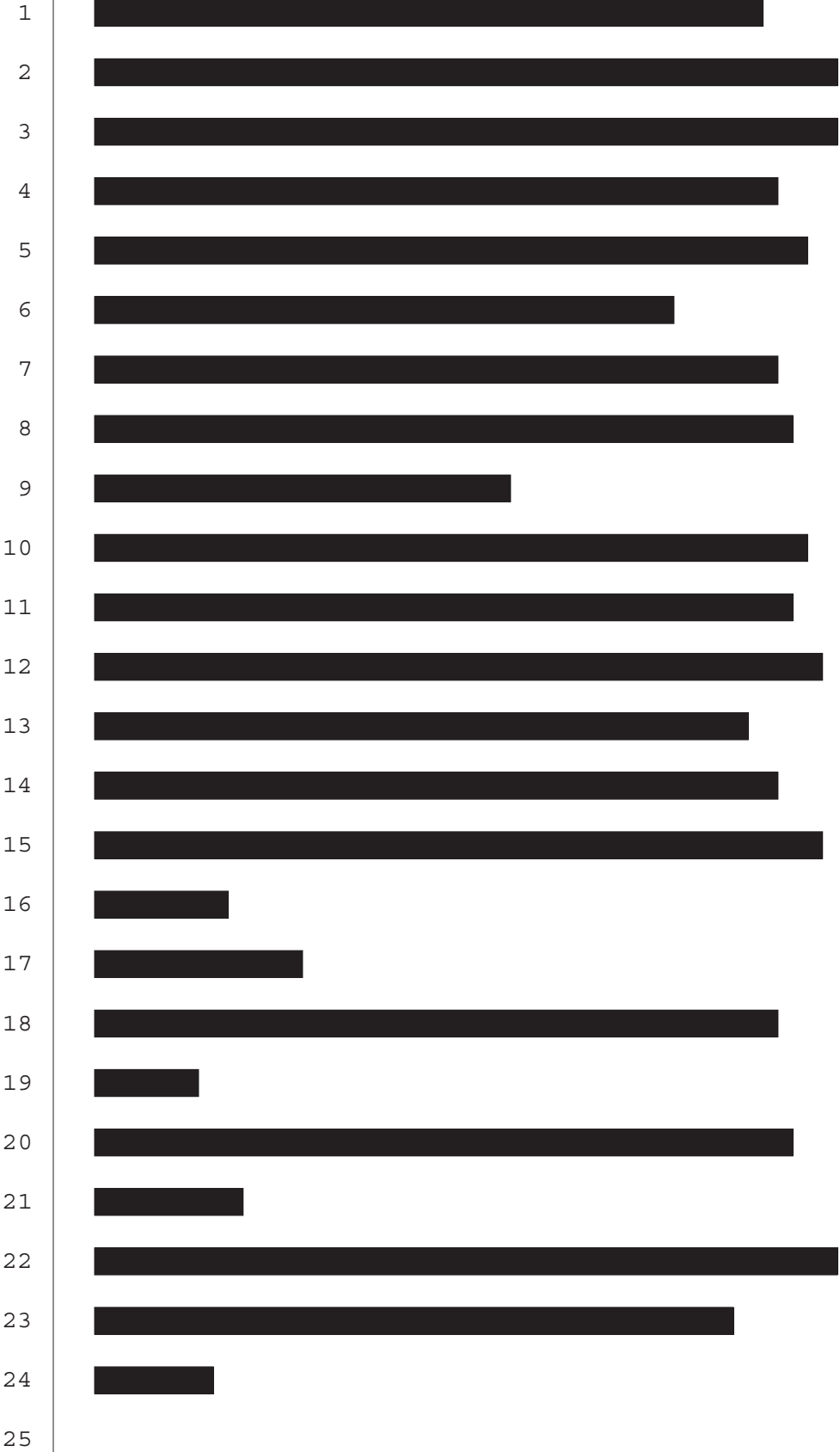














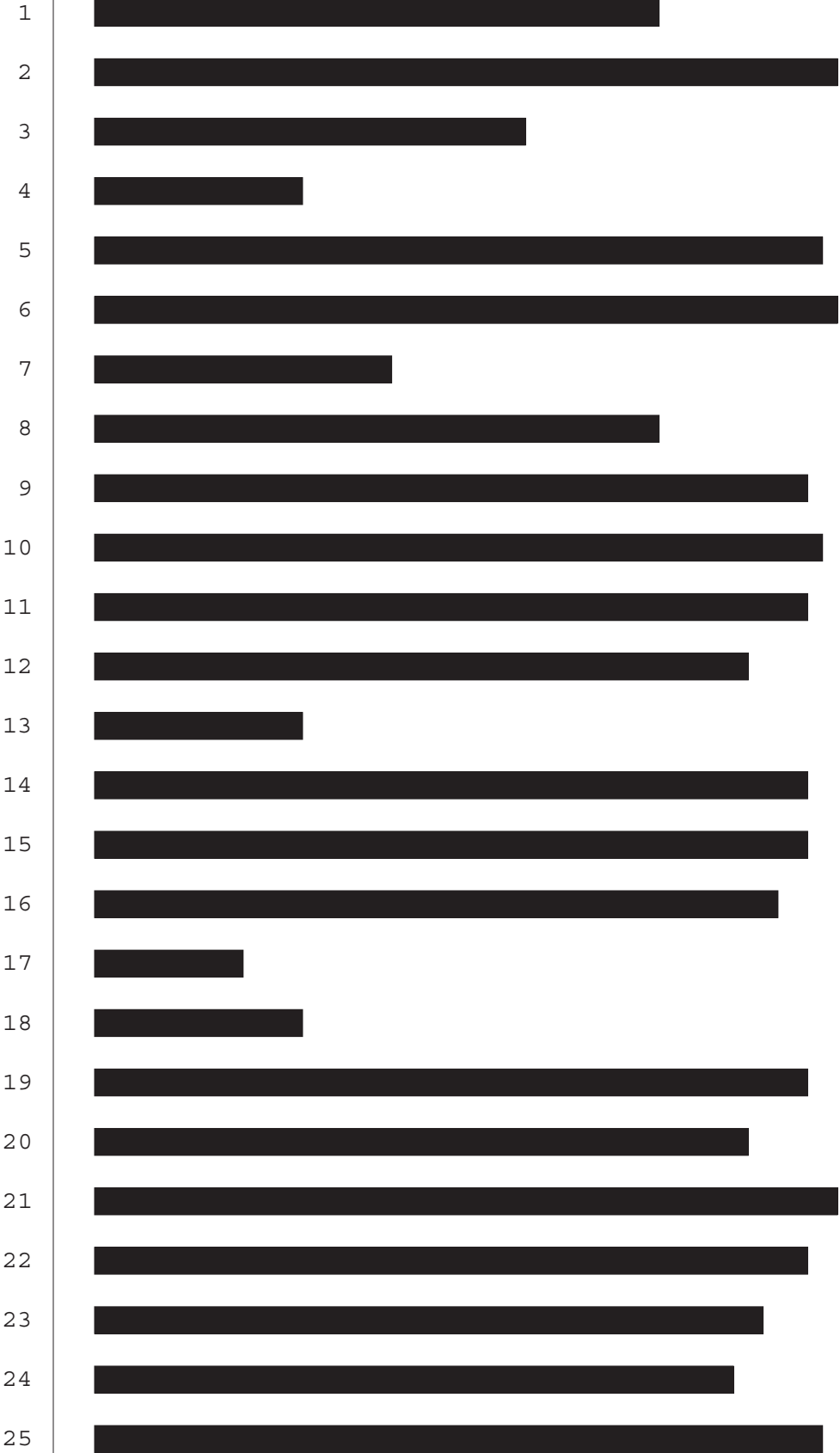
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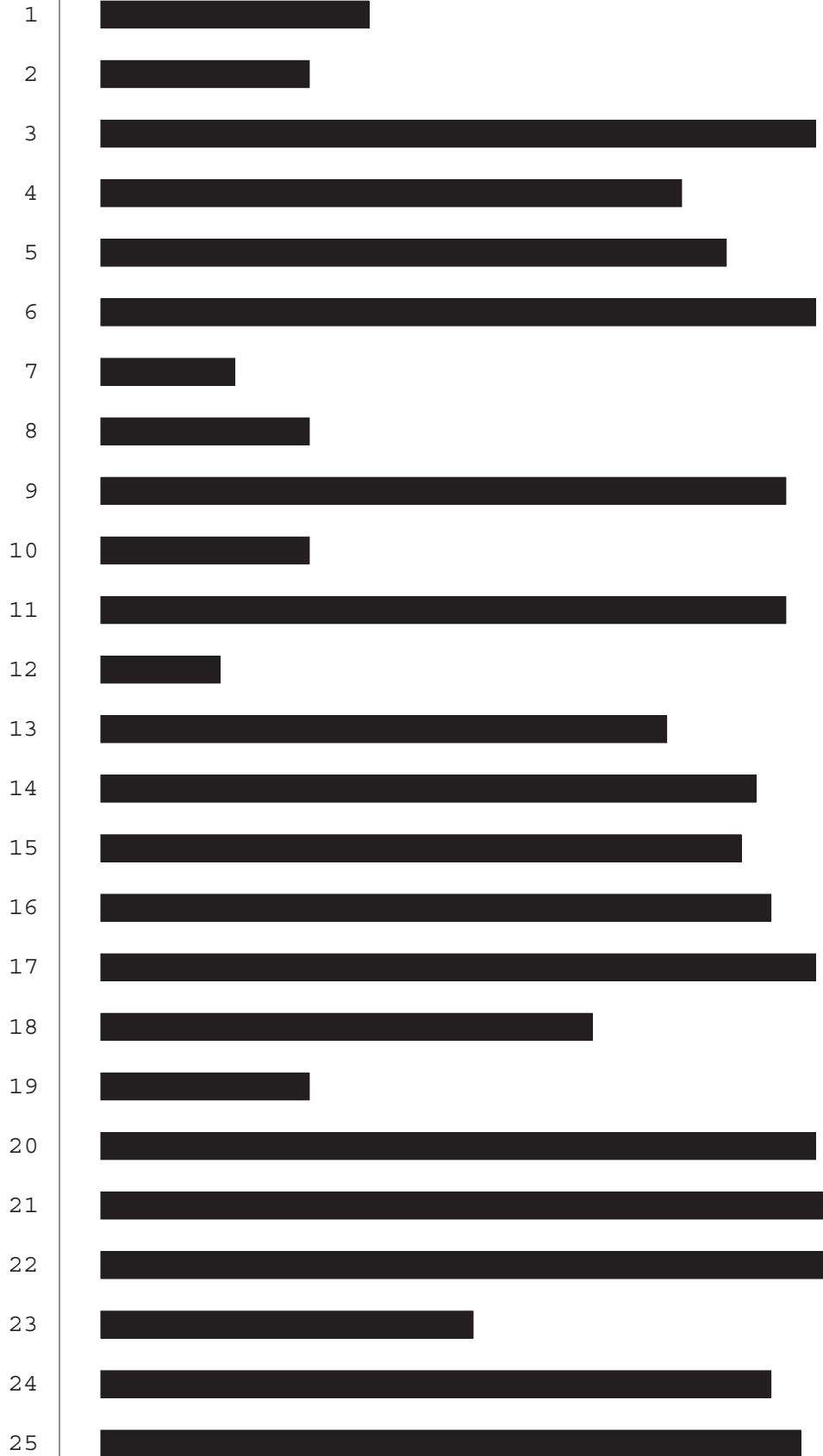


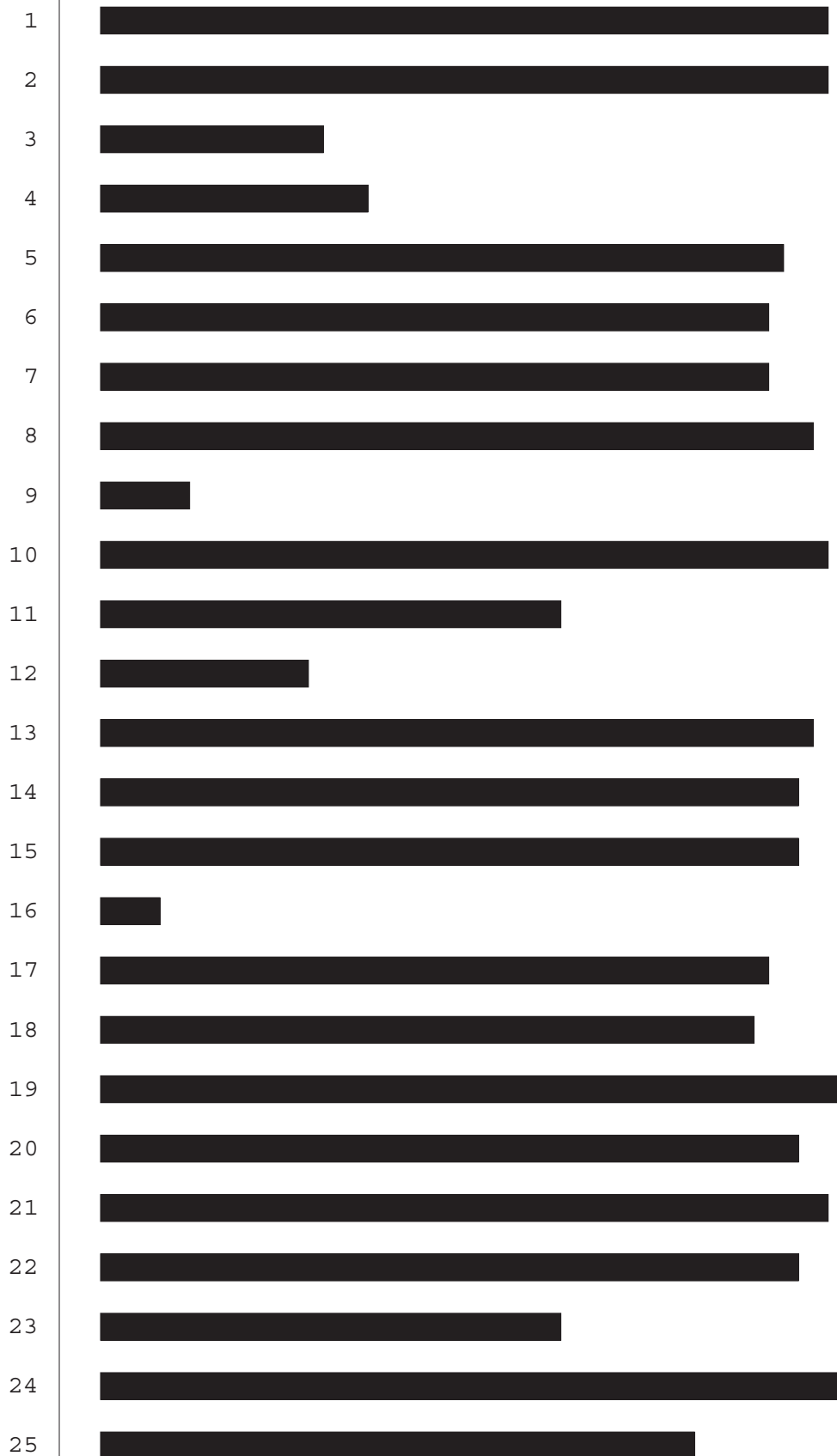


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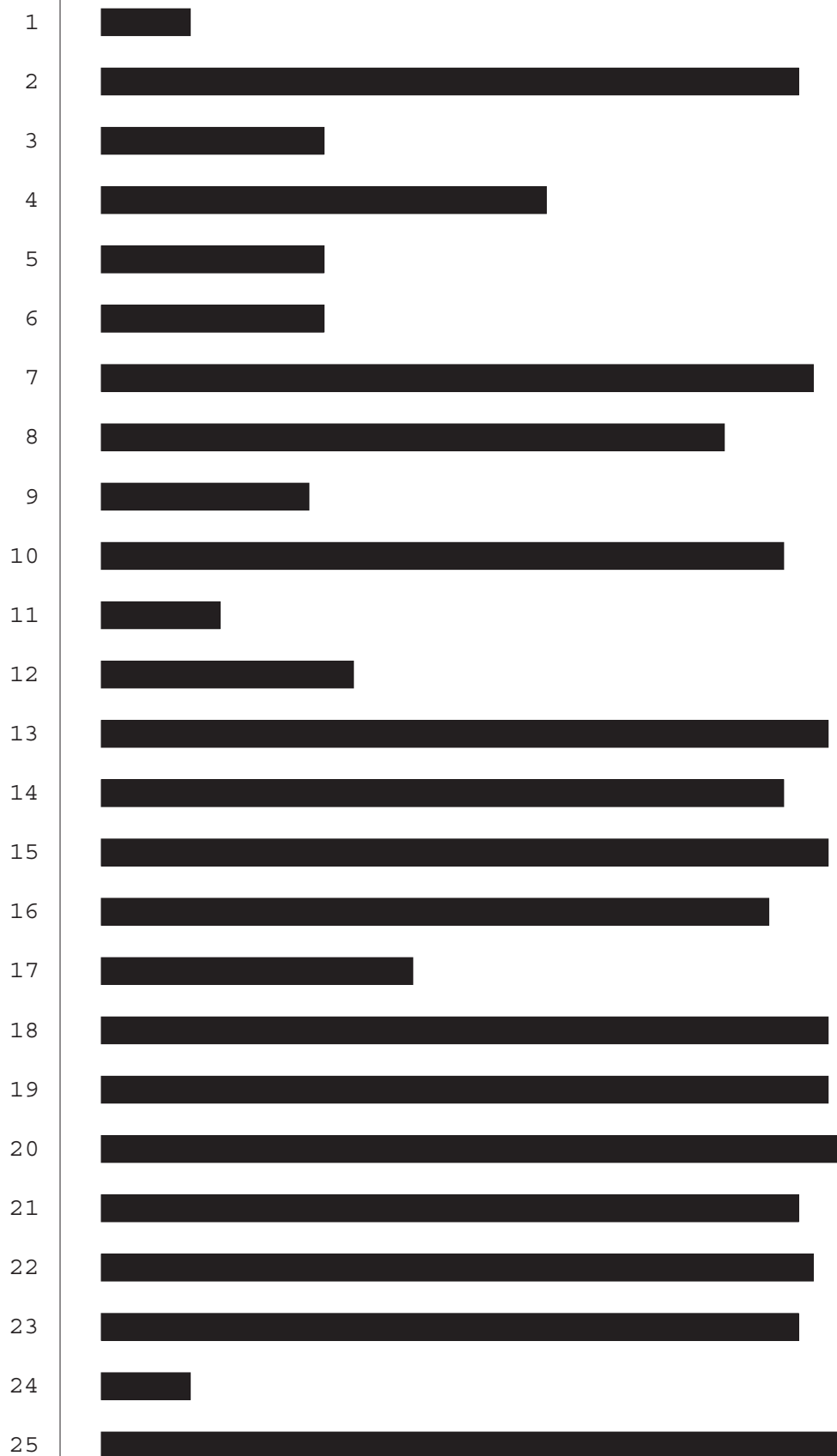






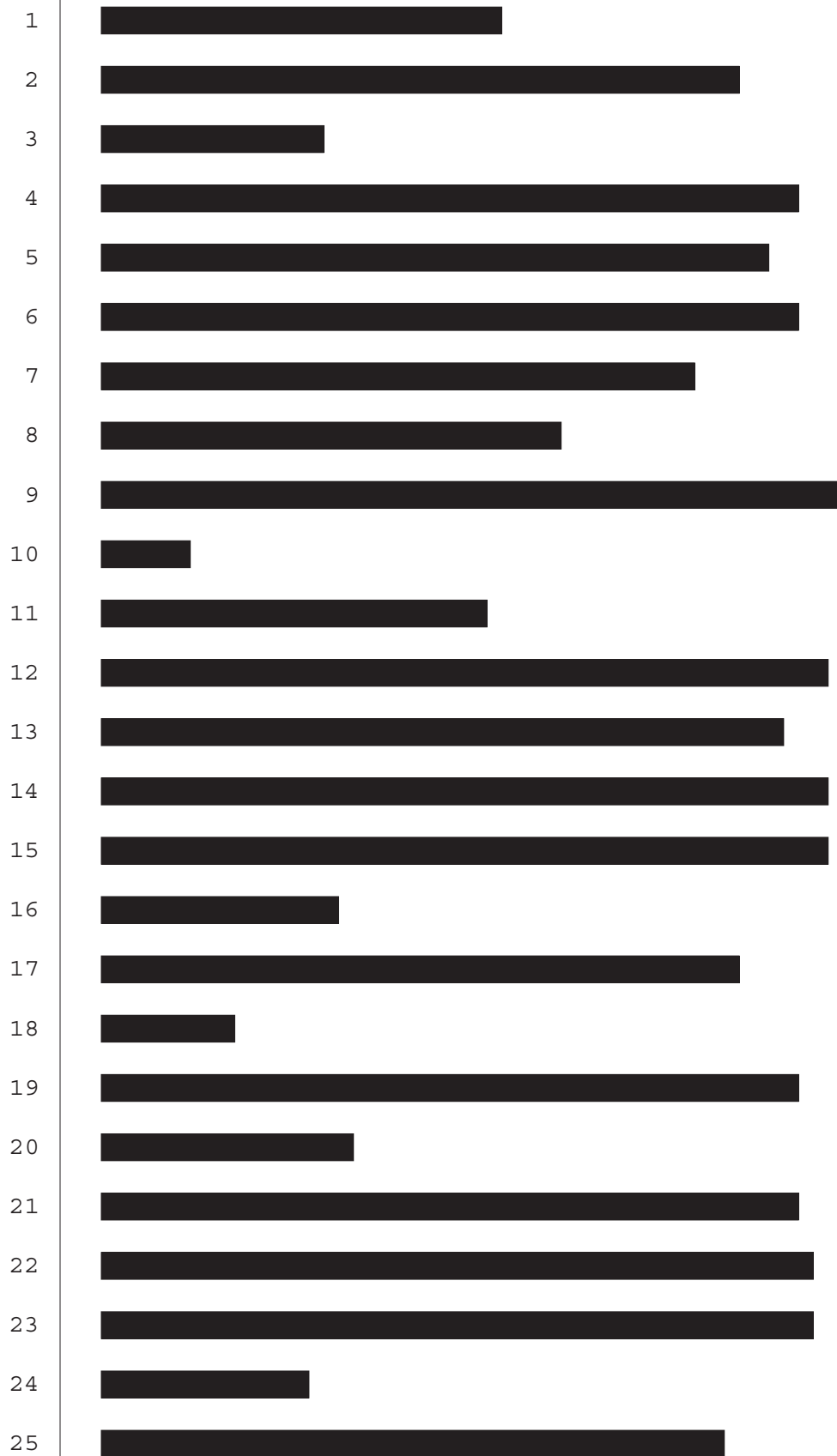


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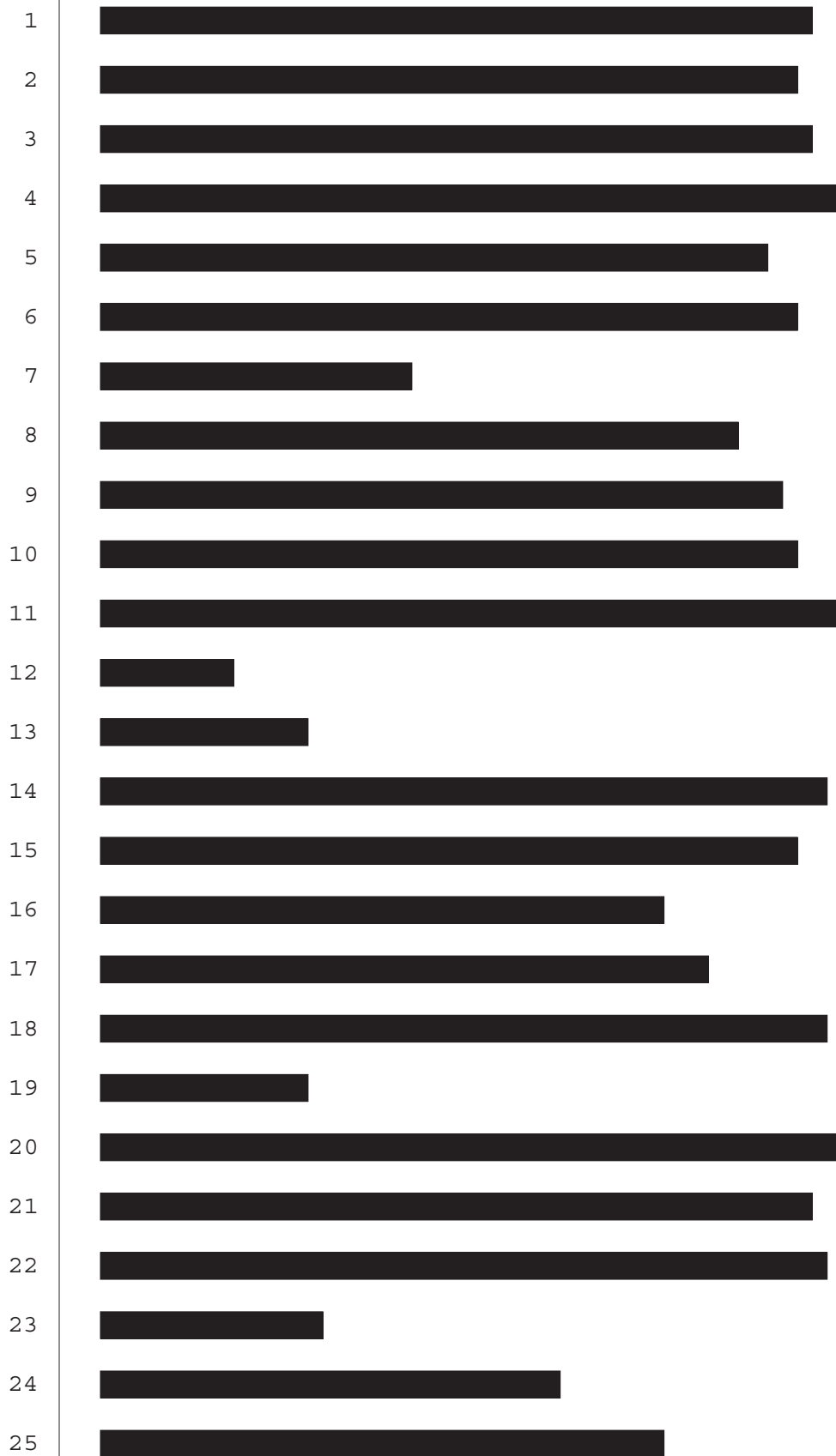






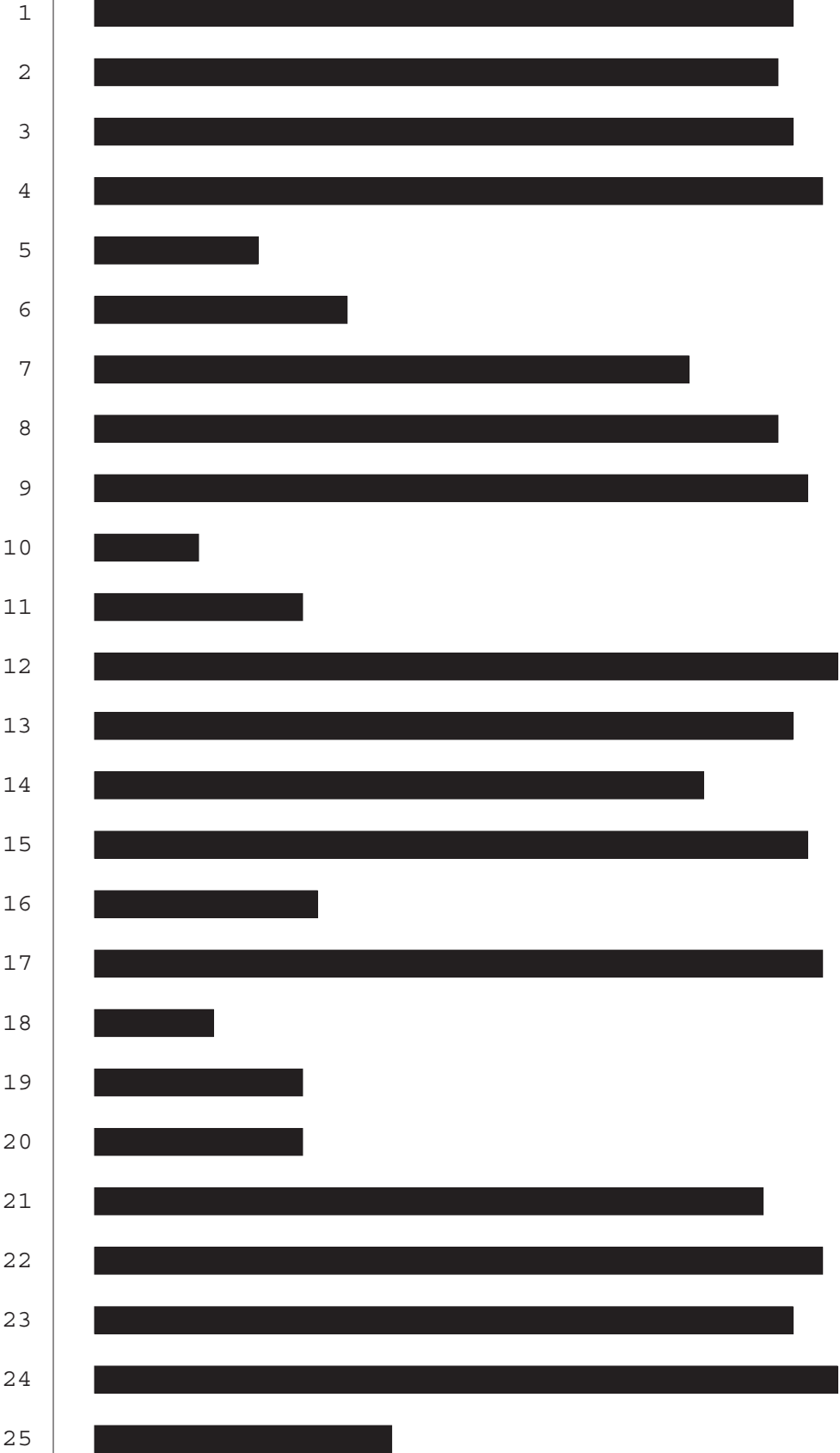


















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MR. KOBRIN: Can we take a break? Do  
you want to take a break.

THE WITNESS: Yeah.

BY MR. HUDSON:

Q. Can we just finish this? I'm almost  
done.

MR. KOBRIN: Yeah. How many more  
questions do you think you have?

MR. HUDSON: Just going through, there's  
probably like, I don't know, six more. They're  
just going to be the same questions every one.

MR. KOBRIN: Why don't we just take a

1 quick break.

2 MR. HUDSON: Okay. We'll take a break.

3 THE VIDEOGRAPHER: We're going off the  
4 record. The time is 5:29 p.m.

5 (Recess from 5:29 p.m. to 5:51 p.m.)

6 THE VIDEOGRAPHER: We're going back on  
7 the record. The time is 5:51 p.m.

8 [REDACTED]

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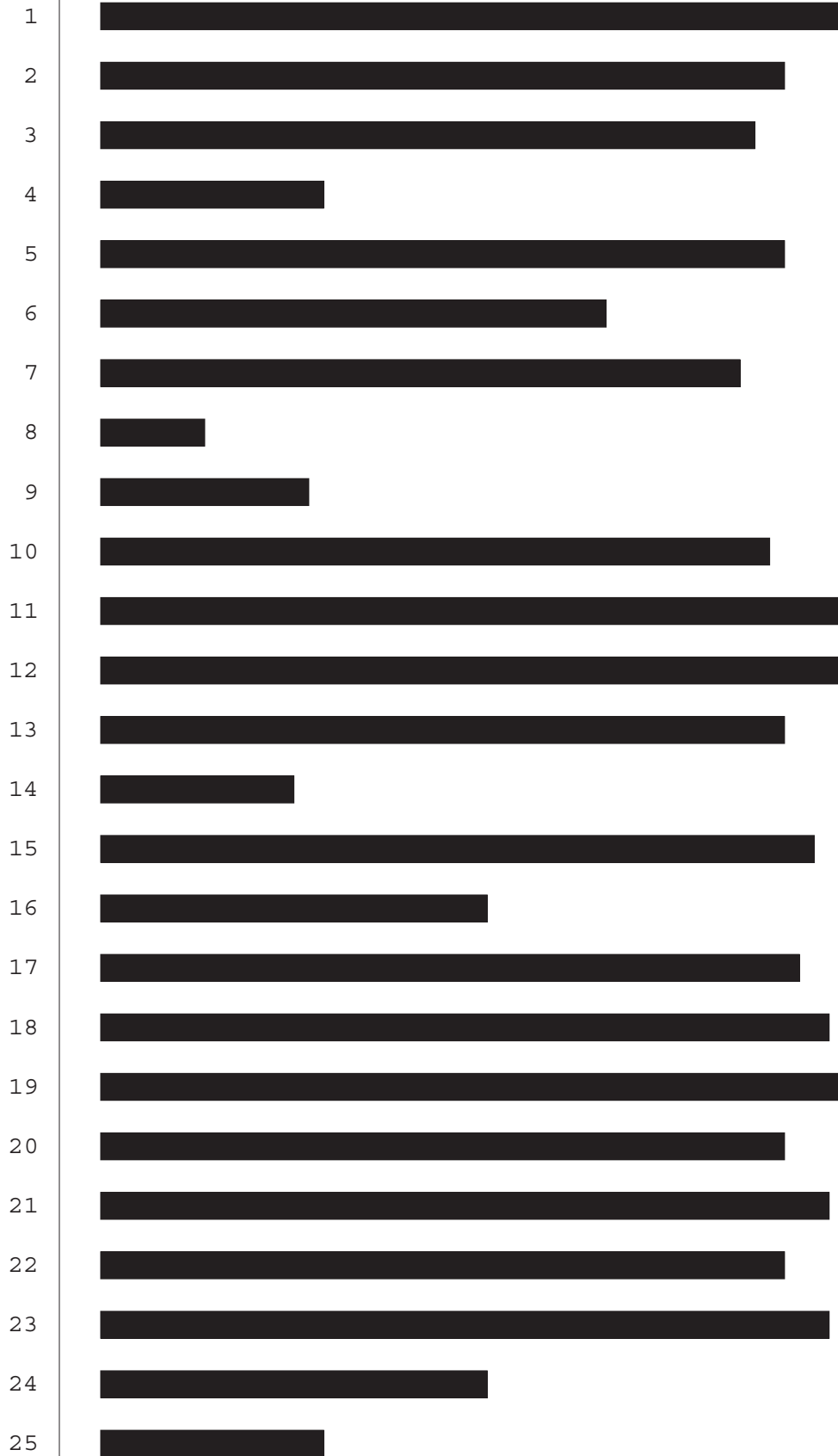
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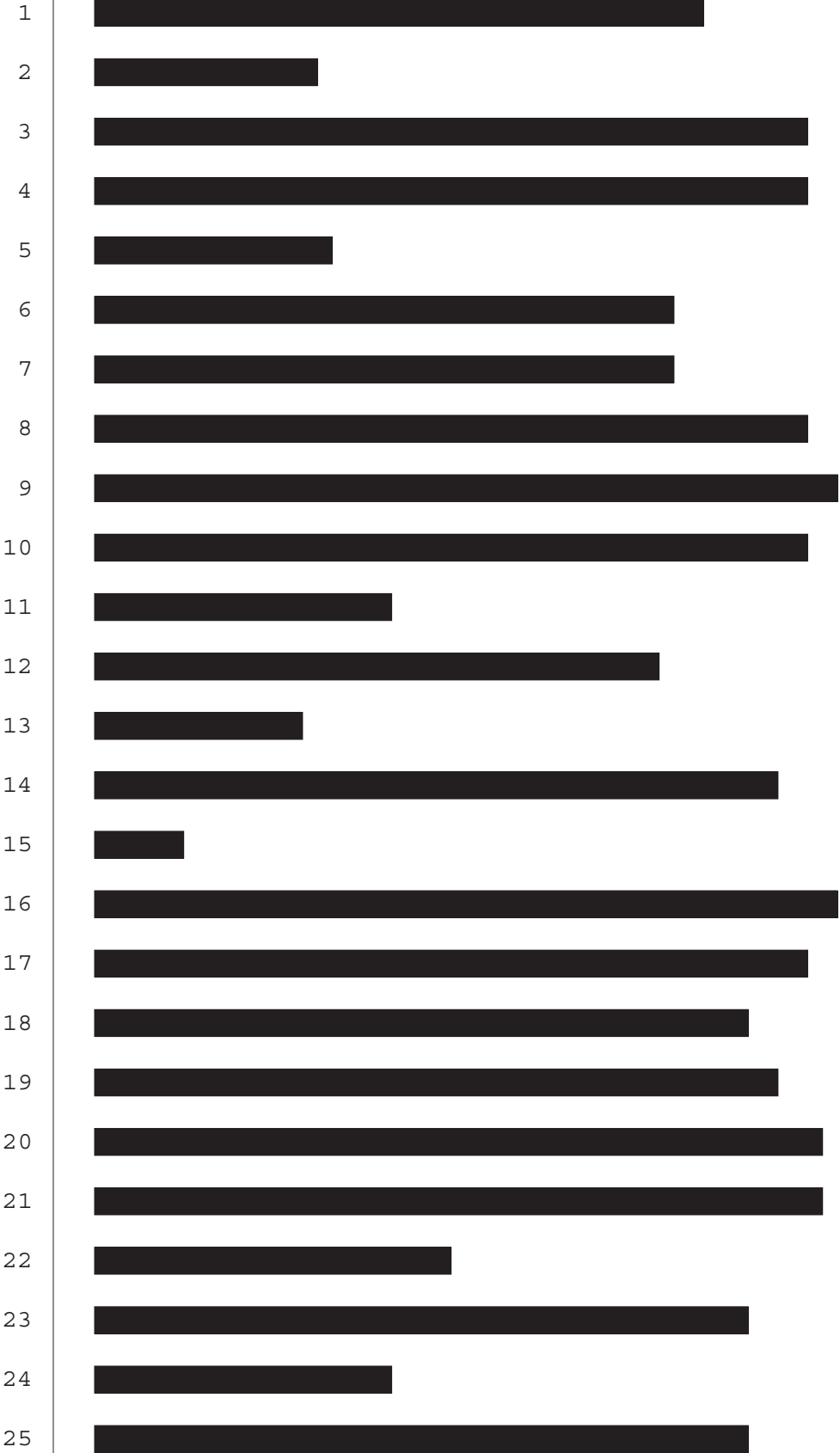


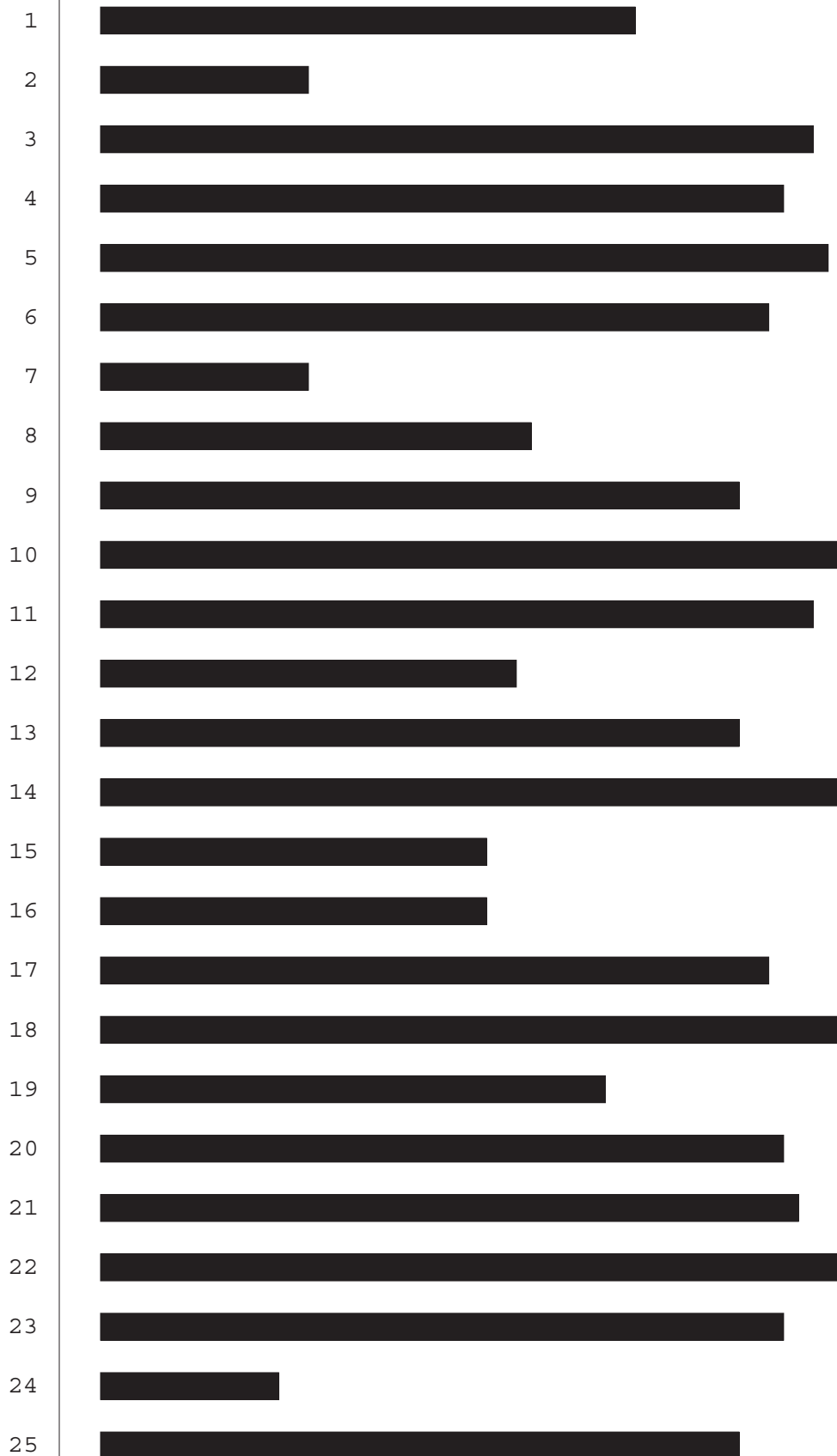




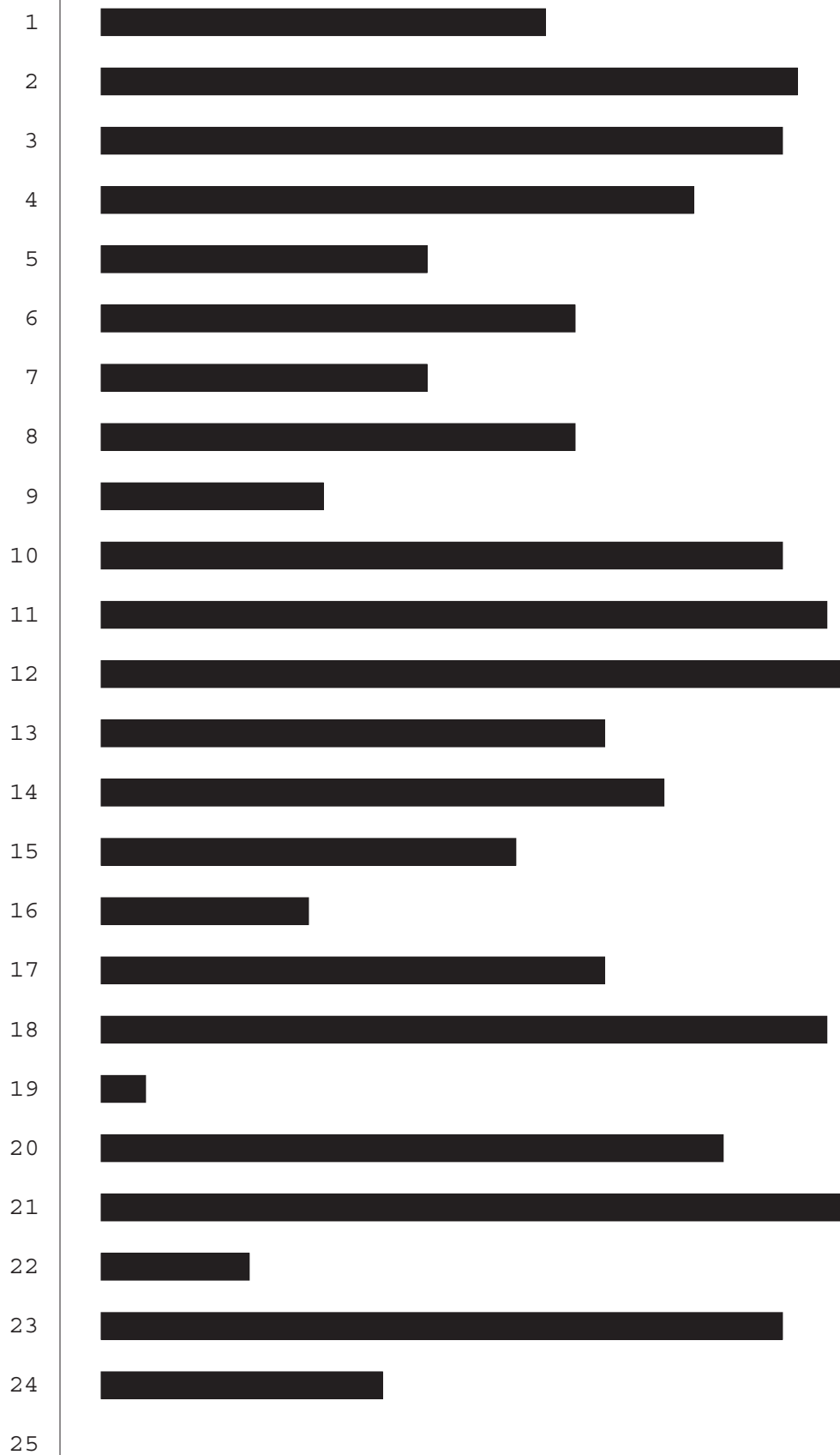
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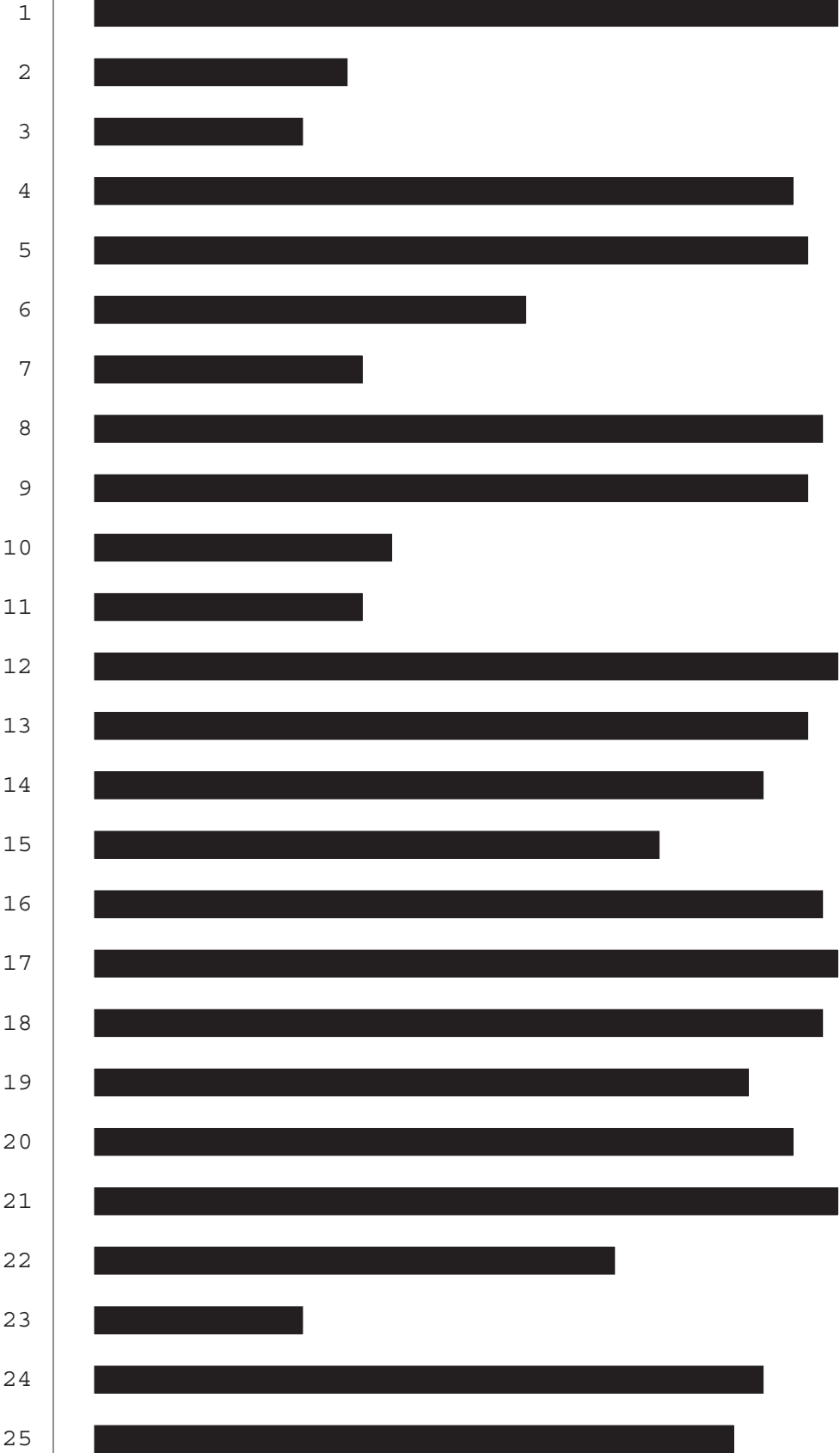


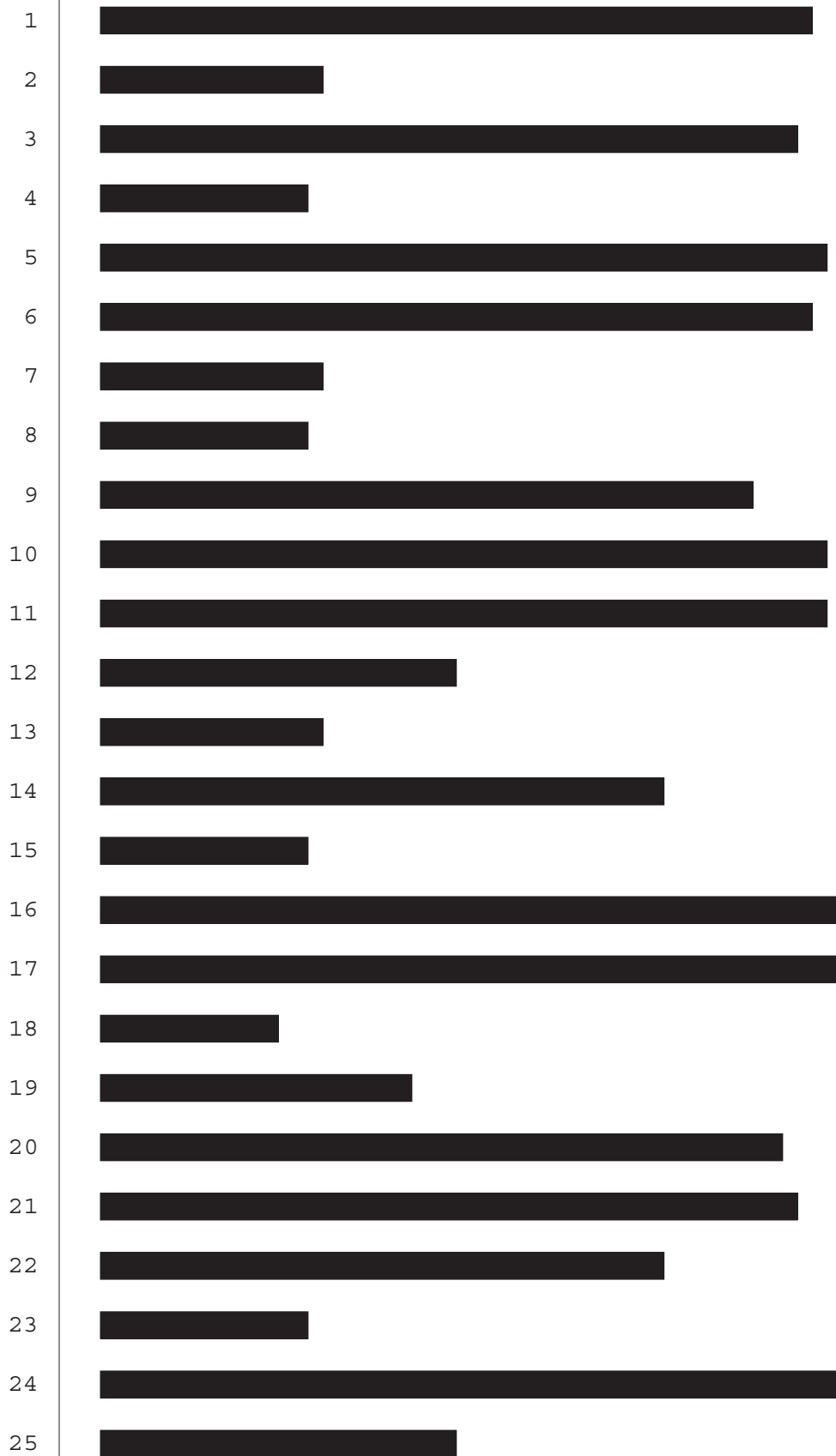






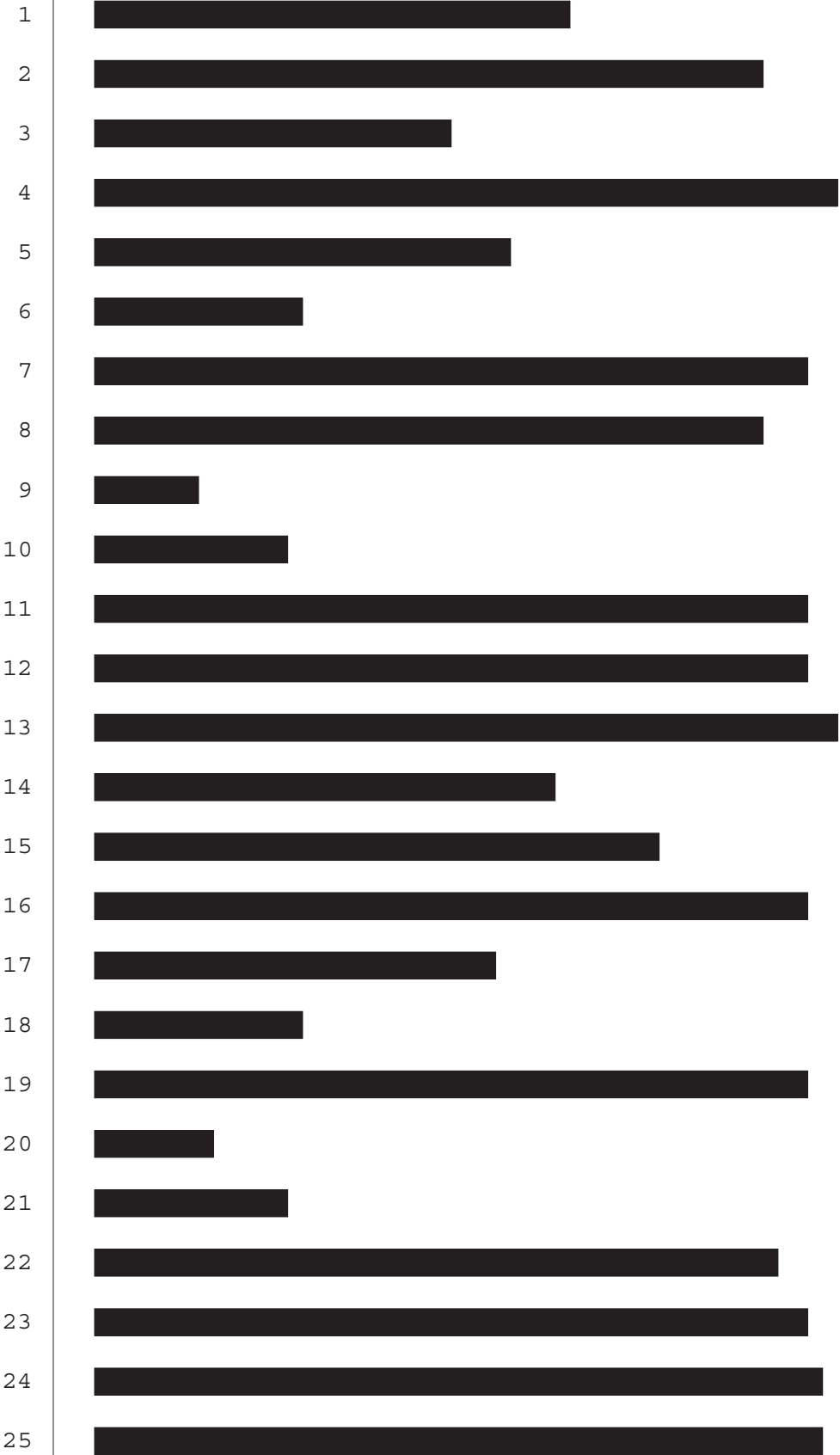
























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10 [REDACTED]

11 MR. HUDSON: I don't have any further  
12 questions.

13 MR. KOBRIN: Let's go off the record  
14 real quick.

15 THE VIDEOGRAPHER: We're going off the  
16 record. The time is 6:15 p.m.

17 (Recess from 6:15 p.m. to 6:34 p.m.)

18 THE VIDEOGRAPHER: We're going back on  
19 the record. The time is 6:34 p.m.

20 [REDACTED]  
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1     those doctors as a matter of policy or how you  
2     kept track of those doctors or which scripts were  
3     refused. Do you recall that?

4             A.    Yes.

5             Q.    If a doctor was identified as a licensed  
6     doctor who was causing concern for pharmacists,  
7     what steps would your pharmacists take in your  
8     pharmacies?

9             A.    Well, I think, for the most part, you go  
10    in the stores and see a doctor's name on a cork  
11    board, taped to a monitor so that anybody that  
12    comes in there is aware that we're not not filling  
13    all scripts from this doctor, but we're going to  
14    scrutinize and drag that prescription through the  
15    mud as much as possible to make sure it's for a  
16    legitimate purpose.

17            A guy comes in. It's after the hours. We  
18    can't get ahold of the doctor. It's not getting  
19    filled. What we normally do after that is send an  
20    email out at times or call the local stores and  
21    say we just turned this guy away and this is the  
22    reason. It goes out to the stores. I've had  
23    times or I've heard of times where other stores,  
24    CVS, has called us. If we have a store across the  
25    street, a competitor, we may call the competitor

1 and say, you know what, we just sent this guy  
2 there with a script. He took it back. He may be  
3 coming over to you now and this is why. But  
4 they're in the same area, so they have all the  
5 same docs anyway.

6 Q. So even if the person with a script from  
7 the doctor who's kind of identified by the  
8 pharmacy, even if that particular person bringing  
9 that particular script in didn't raise any red  
10 flags, you would still scrutinize that script?

11 MR. HUDSON: Object to the form.

12 BY MR. KOBRIN:

13 Q. Would you still scrutinize the script  
14 even if the patient bringing in the script from a  
15 doctor who had caused some concern for your  
16 pharmacists? Would you still scrutinize it even  
17 if there were no red flags?

18 MR. HUDSON: Object to the form.

19 THE WITNESS: If it's from that doctor,  
20 is that what you're asking?

21 BY MR. KOBRIN:

22 Q. Yes.

23 A. We would scrutinize it.

24 Q. How would you scrutinize it?

25 A. Reading the OARRS report, calling for

1 the diagnosis whether he wants to give it to us or  
2 not, and only filling it during his business  
3 hours. And if you can't get ahold of him to  
4 verify that he even wrote the script, then we  
5 would either give it back or -- it all depends.

6 There's two options. We'll call the doctor  
7 in the morning for you. Come back and get it. Or  
8 the guy might say, no, just give it to me. Then  
9 we would try to call CVS or send an email out and  
10 warn we just gave the script back. This is why.

11 Q. You said that anyone who comes in can  
12 see the name on the cork board. By that do you  
13 mean anyone, customers?

14 A. No. It's back in the pharmacy facing  
15 us.

16 Q. So everyone at the store would know to  
17 scrutinize this doctor's script?

18 A. The pharmacists, yes.

19 Q. We talked earlier in relation to your  
20 testimony about doctors who were licensed but  
21 still caused some concern to your pharmacists  
22 about rejecting scripts. Do you recall that?

23 A. Yes.

24 Q. And I know you said that you were -- I  
25 believe your testimony was that you were a hundred



1     percent certain that it happened and the scripts  
2     were rejected, but you couldn't give an exact  
3     description of when that happened. Do you recall  
4     that?

5           A.     Yes.

6           Q.     Is that accurate?

7           A.     It's an inexact number. I would say  
8     that it happens weekly for the main reason, which  
9     hasn't changed, is they always need it two or  
10    three days early, early, early. So you start  
11    billing. It comes back too soon. You look at the  
12    OARRS report. You see the last time it was  
13    filled, and we don't fill it.

14          Q.     So it did happen regularly, we'll say,  
15    that scripts were rejected at the pharmacy that  
16    you oversaw?

17          A.     Correct.

18                 MR. HUDSON: Object to the form.

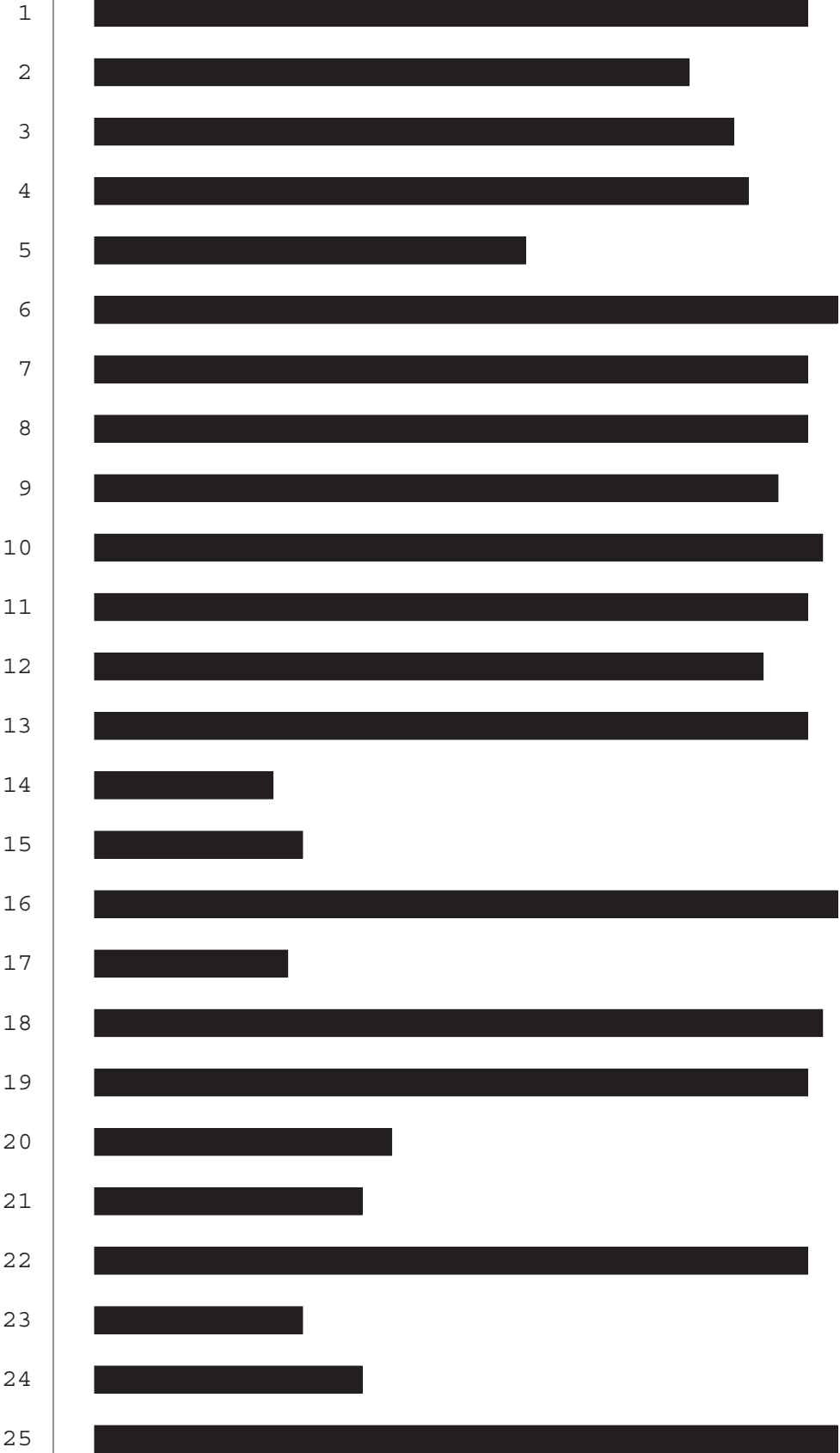
19    BY MR. KOBRIN:

20          Q.     Did it happen regularly?

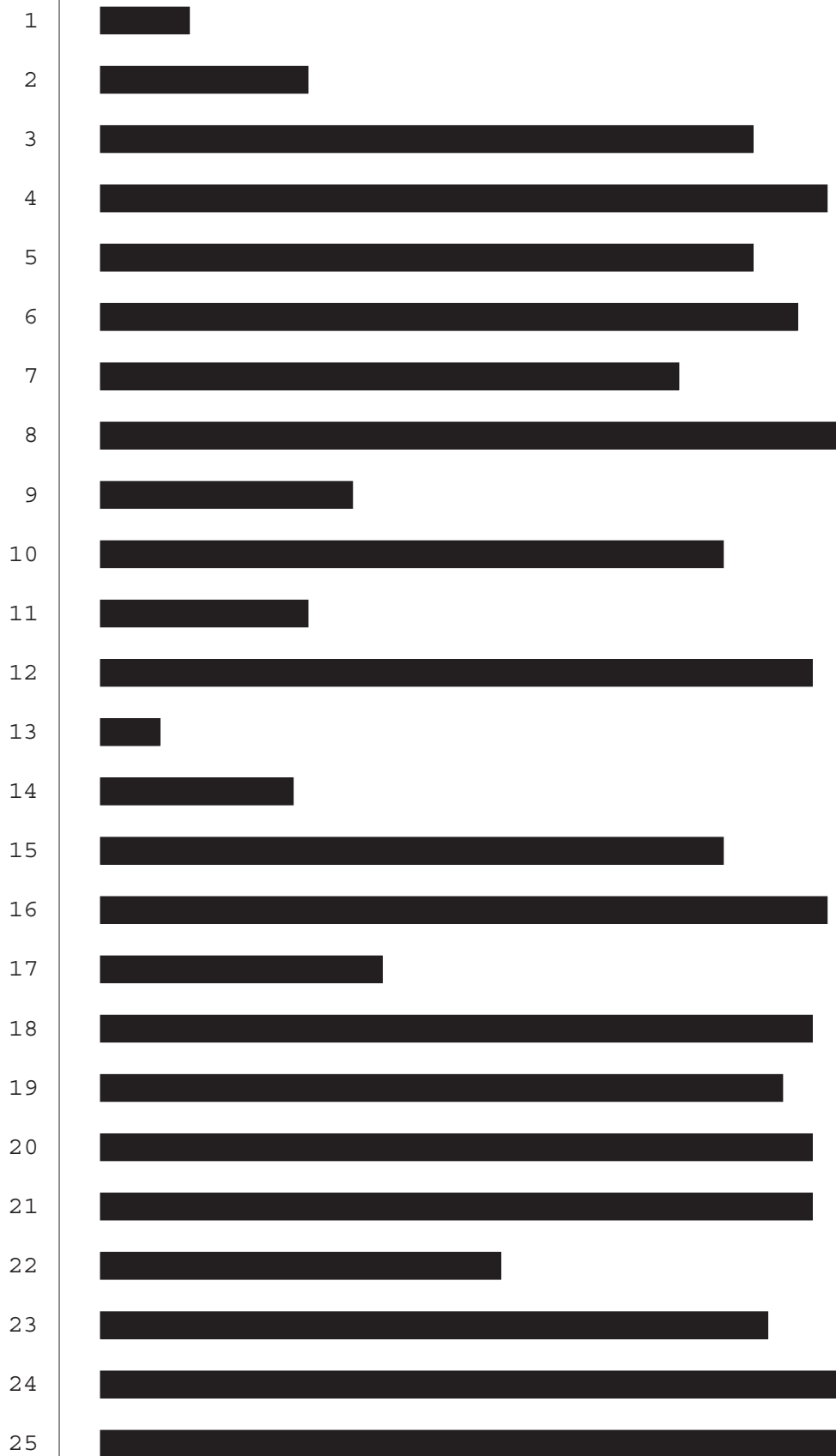
21          A.     Yes.

22          Q.     You testified a little bit about  
23    thresholds and the thresholds, whether they be  
24    from McKesson or Anda or HBC. Do you remember  
25    that?

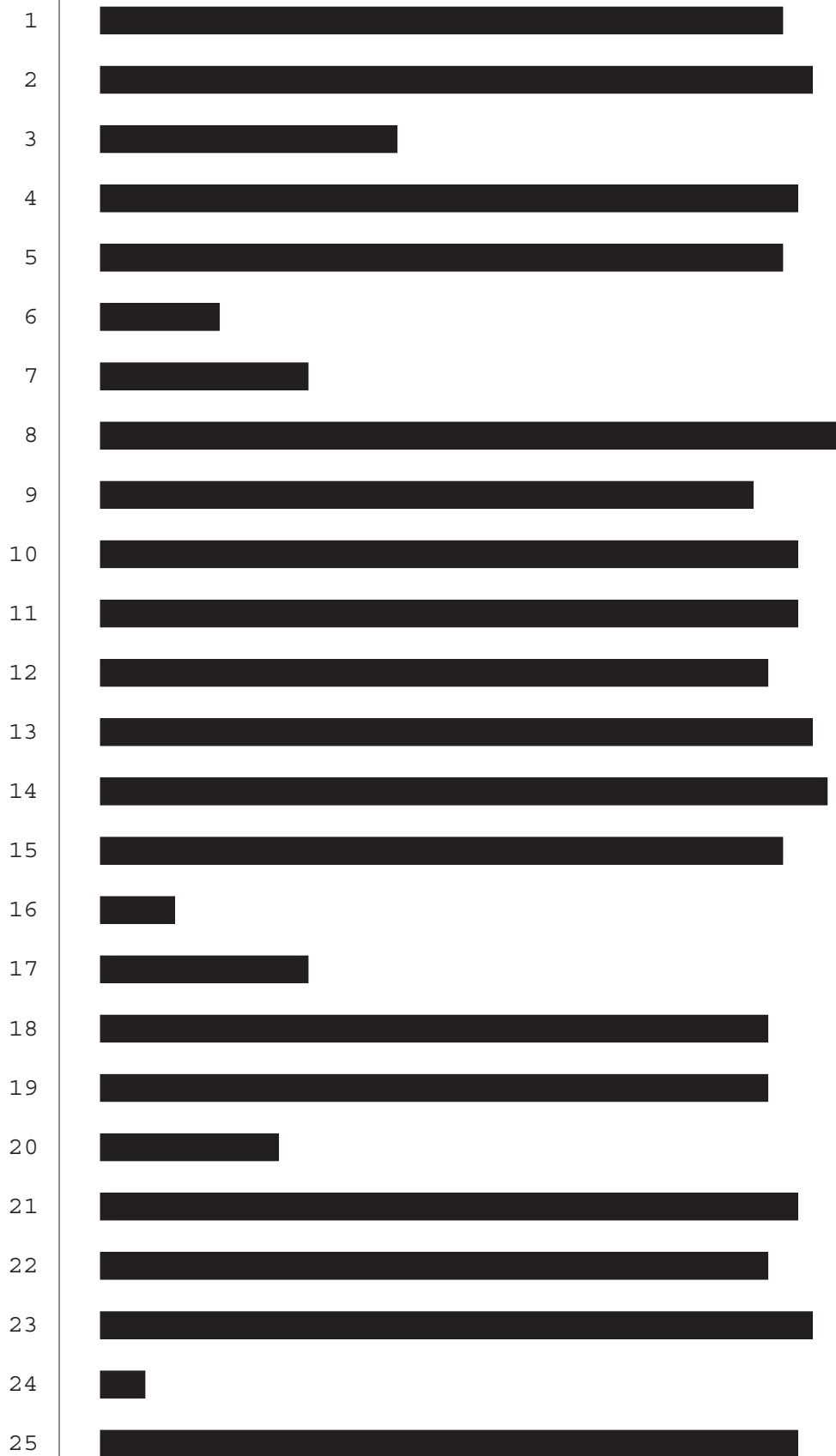
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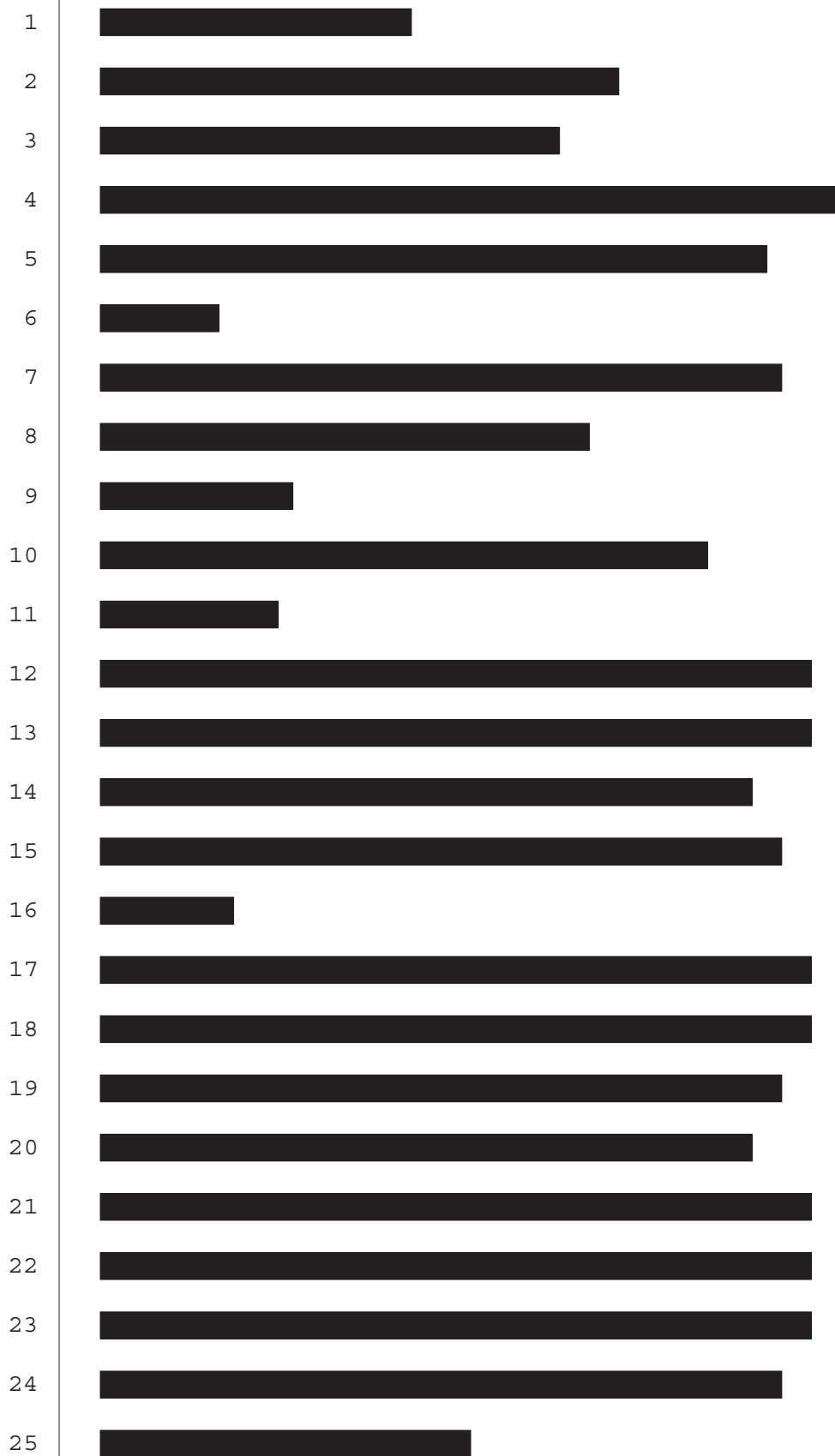




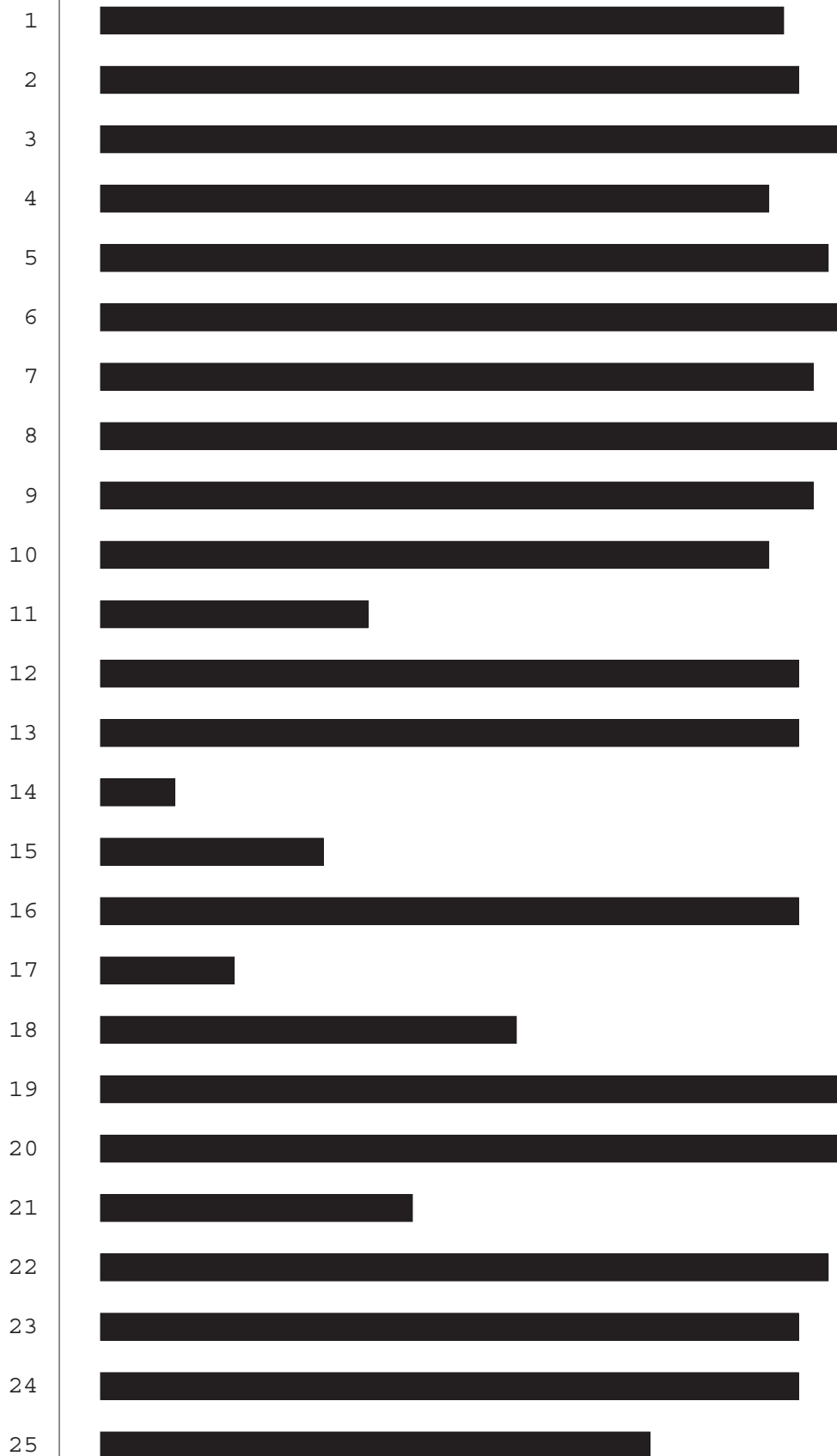












1 Q. And you mentioned LP. What is LP?

2 A. Loss prevention.

3 Q. And they're the people who kind of help  
4 you research all these issues at the next level?

5 A. Yes.

6 Q. I think we're all set.

7 MR. KOBRIN: Pass the witness.

8 RE-EXAMINATION

9 BY MR. HUDSON:

10 Q. In terms of scripts rejected, you  
11 testified that it happens weekly. Is that just  
12 your sense from, as you sit here today, the best  
13 of your recollection?

14 A. It's my sense of just from me being in  
15 the store from the time period we're talking, to  
16 conversations about compliance with my team  
17 members, what are some of the reasons we're  
18 turning away scripts.

19 Q. Is there any reason why Giant Eagle  
20 couldn't have kept a scripts rejected log or  
21 written down on the computer system or somewhere  
22 each instance where a prescription was rejected  
23 and the reason it was rejected?

24 MR. KOBRIN: Object to the form.

25 THE WITNESS: There would be no reason

1 to keep a log like that. You're determining  
2 whether you're going to fill something or not fill  
3 it. You make the determination. You can put into  
4 the computer refilled too soon or whatnot. If you  
5 take the script back, there's no record in the  
6 computer of the script.

7 BY MR. HUDSON:

8 Q. Right. All I'm saying is in the  
9 computer system or somewhere could Giant Eagle  
10 keep a log of scripts that were rejected due to  
11 suspicion of diversion?

12 MR. KOBRIN: Object to form.

13 THE WITNESS: No, because some of those  
14 don't even get into our system. If you bring a  
15 piece of paper to me and I do everything that we  
16 spoke about here for the last -- since 1:00 or  
17 2:00, that prescription might not get dropped  
18 through our system and even get in the system. So  
19 there's no record of the prescription even there.  
20 We just hand it back to you. You take it away.

21 BY MR. HUDSON:

22 Q. Right. I guess what I'm saying is, is  
23 there any reason why Giant Eagle couldn't keep a  
24 log of some kind or a repository, like you take  
25 the script and you go, this thing, this just

1 doesn't look right to me. I'm not filling this  
2 script. In my professional judgment, this isn't  
3 legitimate. Here's the name and what they were  
4 trying to fill and then the reason for rejecting  
5 it is because this doesn't look legitimate to me  
6 and I think it's a possible risk of diversion.

7 Is there any reason why Giant Eagle  
8 pharmacists couldn't as a matter of practice have  
9 kept a log of prescriptions where they decided not  
10 to fill them?

11 MR. KOBRIN: Object to form.

12 THE WITNESS: I don't know. I don't  
13 know why we would ever look at that log. I do not  
14 know what purpose it would serve. We've already  
15 determined we're not filling it.

16 BY MR. HUDSON:

17 Q. Well, one purpose would just be to have  
18 some sense, as we sit here today, of how many  
19 prescriptions there were that were at risk of  
20 diversion that were rejected; right?

21 MR. KOBRIN: Object to form.

22 THE WITNESS: It would help you here  
23 today, yes. It would help what you're trying to  
24 go after. It would help. But it wouldn't give us  
25 anything.

1 BY MR. HUDSON:

2 Q. Well, it would help Giant Eagle, too,  
3 because if you said that weekly -- it's your sense  
4 that weekly pharmacists within your territory are  
5 rejecting filling prescriptions, you could go to  
6 that rejected prescription log and look at it.  
7 And then we'd be able to say, yeah, Pennsylvania  
8 is right. Look down the log. Every week there's  
9 a pharmacist that's not filling a prescription.

10 MR. KOBRIN: Object to form.  
11 Argumentative.

12 THE WITNESS: That was my response. It  
13 would help your case, but it wouldn't do anything  
14 for me. I would never have to see that. They  
15 didn't fill the script. They did what they're  
16 supposed to do.

17 BY MR. HUDSON:

18 Q. Were you ever concerned or to your  
19 knowledge was anyone at Giant Eagle ever concerned  
20 about diversion of opioids?

21 A. All of Giant Eagle is concerned. Any  
22 pharmacist, any pharmacy is concerned about  
23 diversion of opioids.

24 Q. Would keeping records and trying to  
25 track the reasons why prescriptions are not filled

1 potentially serve a role to Giant Eagle in  
2 becoming better at preventing diversion?

3 MR. KOBRIN: Object to form.

4 THE WITNESS: I don't believe it would.

5 BY MR. HUDSON:

6 Q. Similarly, on Exhibits 11 and 12, when  
7 you look at the line items, there's well over a  
8 hundred, probably a couple hundred line items from  
9 pharmacies in your territory of inventory  
10 discrepancies just for these two months, right --

11 MR. KOBRIN: Object to form.

12 BY MR. HUDSON:

13 Q. -- that we've looked at?

14 A. We looked at about 20 discrepancies.  
15 The rest of the report are all resolved issues.

16 Q. Well, let's look at back then at  
17 Exhibit 11. We looked at 20 discrepancies where  
18 the reason for it was unknown; right?

19 MR. KOBRIN: Object to form. If we're  
20 going to say 20, we should know what we're talking  
21 about here.

22 BY MR. HUDSON:

23 Q. We went through. The record is what is.  
24 We went through them; right? Whatever it is it  
25 is.

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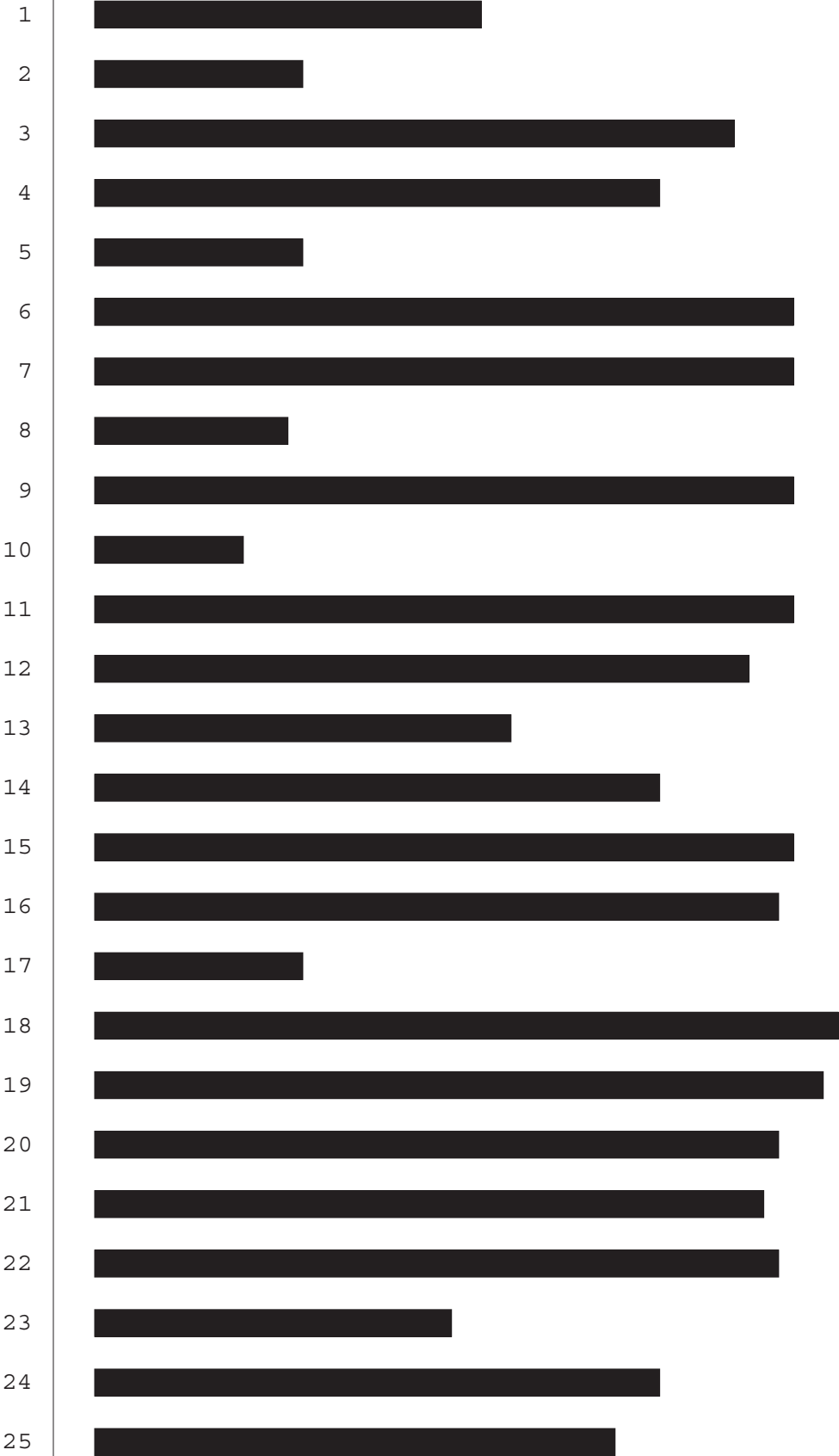
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19 [REDACTED]

20 MR. HUDSON: No further questions.

21 THE VIDEOGRAPHER: This marks the end of  
22 the testimony of Fred Bencivengo. We are going  
23 off the record. The time is approximately  
24 7:00 p.m.

25 (Whereupon, at 7:00 p.m., the taking of

1 the instant deposition ceased.)

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1 COMMONWEALTH OF PENNSYLVANIA )

2 COUNTY OF ALLEGHENY ) SS:

3 C E R T I F I C A T E

4 I, Ann Medis, Registered Professional  
5 Reporter, Certified Livenote Reporter and Notary  
6 Public within and for the Commonwealth of  
7 Pennsylvania, do hereby certify:

8 That FRED BENCIVENGO, the witness whose  
9 deposition is hereinbefore set forth, was duly  
10 sworn by me and that such deposition is a true  
11 record of the testimony given by such witness.

12 I further certify the inspection,  
13 reading and signing of said deposition were not  
14 waived by counsel for the respective parties and  
15 by the witness.

16 I further certify that I am not related  
17 to any of the parties to this action by blood or  
18 marriage and that I am in no way interested in the  
19 outcome of this matter.

20 IN WITNESS WHEREOF, I have hereunto set  
21 my hand this 25th day of January, 2019.

22  
23 \_\_\_\_\_  
Notary Public  
24  
25

1 COMMONWEALTH OF PENNSYLVANIA ) E R R A T A  
2 COUNTY OF ALLEGHENY ) S H E E T

3 I, FRED BENCIVENGO, have read the foregoing  
4 pages of my deposition given on January 22, 2019,  
5 and wish to make the following, if any,  
6 amendments, additions, deletions or corrections:

Page	Line	Change and reason for change:
7	_____	_____
8	_____	_____
9	_____	_____
10	_____	_____
11	_____	_____
12	_____	_____
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15	_____	_____
16	_____	_____
17	_____	_____

18  
19 In all other respects, the transcript is true and  
20 correct.

21 \_\_\_\_\_  
22 FRED BENCIVENGO

23 \_\_\_\_\_ day of \_\_\_\_\_, 2019.

24 \_\_\_\_\_  
25 Notary Public